

# POLITICAL ATTITUDES IN AMERICA

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## ABSTRACT

This study sought to understand how political attitudes are formed and how do these attitudes affect political life in America? The author approached the research through case study to make conclusions. The study began with a hypothesis that the shaping of political attitudes is a political strategy used to threaten democracy. Chapter one found that politicians leverage messaging strategies to shape political attitudes and align the electorate; these strategies may or may not be based on facts, but rather facts as seen by the politician/political parties.

Chapter two furthers an examination of how political attitudes are formed through the lens of race and identity rhetoric. The literature review, further supported by case study discovered that race continues to be used by many politicians to shape political and policy attitudes in the US; subsequently creating social divisions, instilling fear amongst voters.

Chapter three looks at how political attitudes impact political life in the United States, specifically through the judiciary. This chapter demonstrates that the Supreme Court is a political institution shaped by the party affiliation of the justices. This conclusion, supported by a case study of *Obergefell v. Hodges*, shows that political attitudes greatly impact democracy and legislative interpretation.

This thesis found that political attitudes are shaped by strategic messaging. Politicians have consistently used race to shape how voters view issues. The partisan nature of American political life is ultimately a threat to democracy, as seen through the political behavior of the judiciary. The study concludes that the shaping of political attitudes negatively impacts democracy.

Advisor: Professor Adam Wolfson

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## INTRODUCTION

American political life is in turmoil due to increased impression management by politicians to voters, and an unfair justice system rooted in partisan interpretation rather than justice for all; to understand America is to understand political attitudes. The foundation of the United States democracy is a free society, however the notion of the importance of democracy has steadily declined from voters born in the 1930s to the 1980s<sup>1</sup>.

Since the ratification of the United States Constitution in 1788, and the establishment of the federal government, the U.S. electorate has been partisan. In the early 18<sup>th</sup> century there were the Federalists and Anti-Federalists seeking to influence the direction of the country to progress into a union, and today a largely two-party system dominated by the Democrat and Republican parties still stands. As a representative democracy, partisanship greatly dictates the direction of the country and what issues are a priority in terms of policy and budgeting. With this, it is important to understand how voters choose party identification, as the control of the government greatly dictates what defines the good of the people. This thesis seeks to understand the following research question: how are political attitudes formed, and how do these attitudes affect political life in the United States?

### **Significance of Study**

Studies show that polarization and partisanship are increasing trends in American political life<sup>2</sup>. These behaviors make for divisions amongst the electorate in ways that are detrimental to civil discourse and diplomacy amongst voters and politicians. It is important to understand how political attitudes are formed and if the intrinsic and extrinsic nature of attitude

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<sup>1</sup> <https://www.pewresearch.org/fact-tank/2016/06/22/key-facts-partisanship/>

<sup>2</sup> <https://www.pewresearch.org/fact-tank/2016/06/22/key-facts-partisanship/>

shaping is aligned with the democratic ideology that the American founders crafted at the constitutional convention.

Political ideology and party affiliation are identities<sup>3</sup>. Like race, ethnicity, religion, socioeconomic status etc., political attitudes shape a voters' viewpoint of the world, morality and how government should serve its constituents. As a voters' political attitudes are shaped, it brings the voter into a larger group membership of party affiliation<sup>4</sup>. According to social scientist William Swann, group membership "encourage people to channel their personal agency into group behavior, raising the possibility that the personal and social self will combine synergistically to motivate pro-group behavior. Furthermore, the strong personal as well as social identities possessed by highly fused persons cause them to recognize other group members not merely as members of the group but also as unique individuals, prompting the development of strong relational as well as collective ties within the group<sup>5</sup>."

As widely studied, group membership often creates intergroup conflict<sup>6</sup>. With this, party affiliation and political attitudes have led to an increasingly polarized political climate in the United States since the 1970s, with no sign of slowing down any time soon-making the study of how political attitudes are formed vital in understanding how these attitudes affect political life and democracy. A 2004 medical study of political party affiliation and cognitive emotional processing shows that as party affiliation is closely connection to how one views their own identity, a random selection of registered voters in both the Democratic and Republican parties reacted positively when showed a picture of a presidential candidate from their own party versus

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<sup>3</sup> Mason, Lilliana. *Uncivil agreement: How politics became our identity*. University of Chicago Press, 2018.

<sup>4</sup> Swann Jr, William B., Jolanda Jetten, Ángel Gómez, Harvey Whitehouse, and Brock Bastian. "When group membership gets personal: A theory of identity fusion." *Psychological review* 119, no. 3 (2012): 441.

<sup>5</sup> Swann Jr, William B., Jolanda Jetten, Ángel Gómez, Harvey Whitehouse, and Brock Bastian. "When group membership gets personal: A theory of identity fusion." *Psychological review* 119, no. 3 (2012): 441

<sup>6</sup> Mason, Lilliana. *Uncivil agreement: How politics became our identity*. University of Chicago Press, 2018.

emotionally negative when showed a picture of a presidential candidate from the opposing party<sup>7</sup>. Even as the Democratic and Republican parties have shifted in ideology since the 1940's, voters have continued to show stark divisions based on ideology and even switched parties-but nevertheless, maintaining the group membership as a construct. In his op-ed, "Time for a Realignment," David Brooks discusses the possibility of traditional democrat and republican constituencies switching parties based on changing ideology. Brooks notes that "The fact is that political parties can swap constituencies in unexpected and dramatic ways. Over American history there's been a general pattern: a period of party stability; then some new issue comes to the fore that divides the country in new ways; old party coalitions fall apart, and new ones emerge<sup>8</sup>."

American politics has shown a growing sense of tribalism, with each side viewing the other as an enemy rather than an opponent or colleague. According to the 2016 Pew Research Center study of partisanship and political animosity, 45% of Republicans say that Democratic policies threaten the nation's well-being while 41% of polled Democrats view GOP policies as equally threatening. Findings from the study also show that members of both parties associate extreme negative characteristics with members of the other party, results that are the most polarized since 1992<sup>9</sup>. Figure 1 below shows findings from the Pew Research Center's 2016 polarization climate survey<sup>10</sup>.

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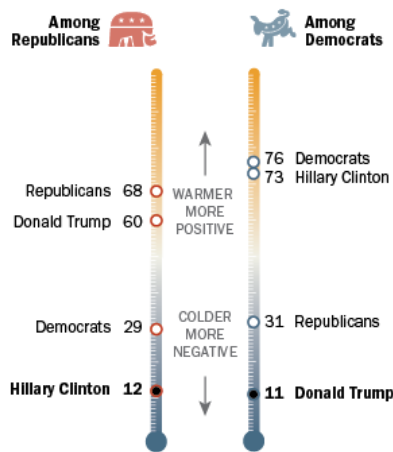
<sup>7</sup> Kaplan, Jonas T., Joshua Freedman, and Marco Iacoboni. "Us versus them: Political attitudes and party affiliation influence neural response to faces of presidential candidates." *Neuropsychologia* 45, no. 1 (2007): 55-64.

<sup>8</sup> Brooks, David (2016) [https://www.nytimes.com/2016/09/09/opinion/time-for-a-realignment.html?\\_r=0](https://www.nytimes.com/2016/09/09/opinion/time-for-a-realignment.html?_r=0)

<sup>9</sup> <https://www.pewresearch.org/fact-tank/2016/06/22/key-facts-partisanship/>

<sup>10</sup> <https://www.pewresearch.org/fact-tank/2016/06/22/key-facts-partisanship/>

**'Cold' views of other party's members,  
frigid views of its presidential candidate**  
*Mean thermometer ratings*



Note: Ratings of the parties are based on a "feeling thermometer" from 0 (coldest) to 100 (warmest).  
Source: Survey conducted March 2-28 and April 5-May 2, 2016.  
PEW RESEARCH CENTER

*Figure 1: Pew Research Center*

The 2016 election of President Donald Trump has energized a deepened feeling of group membership within the electorate with Democrats and Republicans viewing each other as the “enemy<sup>11</sup>”. Since the campaign trail, supporters and protesters of President Trump have clashed across the United States, leading to mass violence and chaos all in the name of political attitudes and ideology. In 2019 The Guardian reported 52 incidents of political violence driven by an expression of support for President Trump. Those who have committed acts of violence have reportedly:

- Explicitly declared support for Donald Trump, or used his slogans, during or in connection with acts or threats of violence.
- Cited Trump or his rhetoric in subsequently explaining acts or threats of violence.
- Committed or threatened violence against opponents of Trump at political events, or while wearing Trump-branded attire signifying their support for the president.

<sup>11</sup> Mason, Lilliana. *Uncivil agreement: How politics became our identity*. University of Chicago Press, 2018.



- Publicly declared an allegiance to Trump before committing or threatening violence against members of political or racial groups that Trump has denounced<sup>12</sup>

In an article titled “Liberals cheer as Antifa [Anti-Fascist] violence escalates, New York Post writer Andy Ngo reports of unprecedented violence by the group since the 2016 election of Donald Trump, a firebombing of a Tacoma, Washington Immigration and Customs Enforcement facility by a member of the liberal activist group in protest of the Republican immigration policies as well as his own beating by the organization as he attempted to cover one of their protests<sup>13</sup>.. In March 2019, Republican and Florida resident Cesar Sayoc plead guilty to the U.S. Department of Justice that he sent pipe bombs through the mail to prominent Democratic politicians including Former V.P. Joe Biden, Rep. Maxine Waters and former Secretary of State Hillary Clinton, fueled by his obsession with President Trump and to express his displeasure with the Democratic party<sup>14</sup>. Is this conscious behavior of the American voter, or has the enlightened statesmen manipulated the electorate so divisively that group membership and the agency it creates has trounced American political civility? While the 2016 presidential election may have accelerated party agency and passion, the idea of political attitudes and “us v. them” membership can be traced to the very beginning of the American fabric.

Since the beginning of the republic, America feared the creation of an oppressing Aristocracy reminiscent of Europe, but at the same time, feared too much control amongst the people that factions could arise and destroy liberty<sup>15</sup>. With this, political parties formed to

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<sup>12</sup> <https://www.theguardian.com/us-news/ng-interactive/2019/aug/28/in-the-name-of-trump-supporters-attacks-database>

<sup>13</sup> <https://www.google.com/amp/s/nypost.com/2019/07/17/liberals-cheer-as-antifa-violence-escalates/amp/>

<sup>14</sup> <https://www.npr.org/2019/08/05/748420957/cesar-sayoc-florida-man-who-mailed-bombs-to-democrats-and-media-gets-20-years>

<sup>15</sup> Tocqueville, Alexis de. "Democracy in America, ed. JP Mayer." Garden City, NJ: Anchor (1969).

represent the interests of the people. James Madison knew that political parties would develop as a result of the union. He profoundly notes in Federalist 10 that “liberty is to faction what air is to fire.”<sup>16</sup> With this, the personal interests of man are the roots of political parties. And these interests, make up the will of the people once a party takes office.

Historically, America has primarily been a two-party system with a winner take all outcome at the polls. What once started as the Federalists and Anti-Federalists has transitioned over time. History has seen the establishment of the Democratic and Whig parties, turn to Democratic and National Republic parties and now the Democrat and Republican political parties. Regardless of the era that is examined, the voters are the single most important factor in the American democracy; for without voters, parties have no power<sup>17</sup>. With this, it is important to consider what influences political attitudes and party membership, especially as membership becomes increasingly polarized driven by a fuel for group orientation and agency. Experts say there are several factors that contribute to how voters choose parties (not only in registration, but in votes casted at the polls). Political language, family/religion, economics and the media are all leading influences of partisanship and voter opinion<sup>18</sup>. Alexis de Tocqueville’s observations of democratic life in America and the establishment of political parties provides a framework to understanding these influences. Tocqueville notes:

*“In the United States there is no religious hatred because religion is universally respected and no sect is predominant; there is no class hatred because the people is everything, and nobody dares to struggle against it; and finally, there is no public distress to exploit because the physical state of the country offers such an immense scope to industry that man has only to be left to himself to work marvels. Nevertheless, the ambitious are bound to create parties, for it is difficult to turn the man in power out simply for the reason that one would like to take his place*

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<sup>16</sup> Madison, James. "Federalist no. 10." *November 22*, no. 1787 (1787): 1787-88.

<sup>17</sup> Brams, Steven J. "Mathematics and democracy: Designing better voting and fair-division procedures." *Mathematical and Computer Modelling* 48, no. 9-10 (2008): 1666-1670.

<sup>18</sup> Cohen, Geoffrey L. "Party over policy: The dominating impact of group influence on political beliefs." *Journal of personality and social psychology* 85, no. 5 (2003): 808.

Jackson, David J. "Selling politics: The impact of celebrities' political beliefs on young Americans." *Journal of political marketing* 6, no. 4 (2008): 67-83.

*Hence all the skill of politicians consists in forming parties; in the United States a politician first tries to see what his own interest is and who have analogous interest which can be grouped around his own; he is next concerned to discover whether by chance there may not be somewhere in the world a doctrine or a principle that could conveniently be placed at the head of the new association to give it the right to put itself forward and circulate freely<sup>19</sup>.*

Partisanship is at the very foundation of a representative democracy (as opposed to a pure democracy). As previously discussed, voters are the cornerstone of the democracy in the United States and elect politicians to represent their interests and legislate on issues that reflect the electorates values and ideology of the public good. This can be traced back to classical political theory which gave foundation for the democracy and need for government. Political philosophers John Locke and Thomas Hobbes discuss the state of nature and man's need for government early before the creation of the republic, with Locke focusing on the social contract which provides a framework for voters giving power to the government to navigate the public good<sup>20</sup>. However, to understand democracy is to understand partisanship as political parties created the democracy<sup>21</sup>. How voters decide which parties/candidates to select to represent their interests within the government is important to understand because these interests become the will of the people as laws are passed. As largely accepted by many political scientists and scholars, party identification is a key influence on voting decisions<sup>22</sup>. Research shows that since the 1970's there has been a rise in partisanship and this increase was reflected in an eighty-percent increase in party-line voting in the 1996 presidential election as compared to 1972<sup>23</sup>.

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<sup>19</sup> Tocqueville, Alexis de. "Democracy in America, ed. JP Mayer." Garden City, NJ: Anchor (1969) 177.

<sup>20</sup> Waldron, Jeremy. "John Locke: social contract versus political anthropology." *The Review of politics* 51, no. 1 (1989): 3-28.

<sup>21</sup> Aldrich, John H. *Why parties?: The origin and transformation of political parties in America*. University of Chicago Press, 1995.

<sup>22</sup> Greene, Steven. "The social-psychological measurement of partisanship." *Political Behavior* 24, no. 3 (2002): 171-197.

<sup>23</sup> Bartels, Larry M. "Partisanship and voting behavior, 1952-1996." *American Journal of Political Science* (2000): 35-50.

People give politicians power; through election and re-election, constituents rely on politicians/parties to represent their interests and hold them accountable to do so. Since 1952, the federal government has largely been comprised of a divided government with opposing political parties holding office in the executive and legislative office. As political parties have become more polarized, often time legislation is passed along party lines. President's rely on a majority occupancy in Congress to get budgets and bills passed that reflect the platforms they ran on, and constituents hold Congress and the President accountable to doing so<sup>24</sup>. The average American understands the continuum of the left to right and align themselves to a more polarized place on the aisle now more than ever<sup>25</sup>

As political parties have become more polarized since the 1970's, their ideologies are easier to understand for voters<sup>26</sup>. As voters become clearer on party platforms and positions, there is a greater sense of urgency to examine the factors that influence partisanship which is gauged through attitudes and group identification. It is commonly known and studied that partisan voters are more likely to participate in voting on election day as compared to independents<sup>27</sup>. This energy to be involved in the political process is the root of democracy, and a positive trend for the country. However, just as much as participation is crucial to democracy, so are peaceful protest, civility and free thought. Now more than ever, it is imperative for scholars and voters alike to understand, what fuels the energy behind political group orientation; facts or alternative facts? What influences a voter's attitude toward a political party? Does this

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<sup>24</sup> Aldrich, John H. *Why parties?: The origin and transformation of political parties in America*. University of Chicago Press, 1995.

<sup>25</sup> Baldassarri, Delia, and Andrew Gelman. "Partisans without constraint: Political polarization and trends in American public opinion." *American Journal of Sociology* 114, no. 2 (2008): 408-446.

<sup>26</sup> Aldrich, John H. *Why parties?: The origin and transformation of political parties in America*. University of Chicago Press, 1995.

<sup>27</sup> Bartels, Larry M. "Partisanship and voting behavior, 1952-1996." *American Journal of Political Science* (2000): 35-50.

attitude determine their party affiliation? And, once political attitudes are formed how do these models of behavior impact political life, democracy, law and order within the United States? Do we have a government that seeks liberty and justice, or has the desire of man to achieve his personal interests (as warned by James Madison) usurped justice thus making American politics a divisive game of manipulation of the public? This thesis seeks to answer these questions and build on the University of Michigan American National Election Study which has been used as a foundation to understand partisanship in the United States.

### **Thesis and Methodology**

This thesis approached the research with a conceptual framework that as political attitudes are shaped and polarized, the American democracy is compromised for political gain. A case study method is used, comparing emergent themes from scholarly literature against political events. Conclusions are drawn by showing correlations from theme to case study. This approach aims to address the guiding research question and conceptual framework. The findings of the research are significant because they help to support growing research about political polarization and the attitudinal model. The Pew Research Institute and peer political science think tanks report an ideological polarizing trend that has peaked at the highest level in over 50 years. As Benjamin Franklin stated on the last day of the constitutional convention, America has a republic, if we can keep it. Understanding how political attitudes are formed and how these attitudes impact democracy will help voters and scholars alike keep our republic and democracy.

### **Thesis Outline**

This thesis is divided into three chapters, each with a focused literature review and case study. Chapter one discusses political messaging and how this communication strategy shapes political attitudes. Chapter two draws from findings in chapter one to examine the use of race/ethnicity in political rhetoric and how this strategy has systematically aligned the electorate

during years of growing polarization. Understanding that political attitudes are shaped and polarized, chapter three examines how these attitudes impact the justice system; a cornerstone of democracy. The literature review and case study reflect on the partisan behavior of the Supreme Court and the impact political attitudes have on the justice in the United States. The thesis concludes with a reflection of the research and findings, with synthesis emergent themes discussed and recommendation for further research.

This introduction has provided the reader with the thesis research questions, an overview of the American political system from past to present and outlined the importance of understanding political attitudes as it relates to democracy. The introduction then highlights factors that influence partisanship and the growing polarized political climate in the United States. Additionally, this section discussed the importance of understanding partisanship as party affiliation influences voting decisions and political discourse. Emphasizing the importance of how political attitudes are shaped and their subsequent impacts on American society, the remaining chapters provide greater context to understanding the formulation of partisan behavior with case studies that support the argument.

## CHAPTER ONE: POLITICAL MESSAGING

This literature review focuses on the influence political language has on partisanship and political attitudes amongst voters. The examination of this influence strives to highlight political language as a tool used to influence partisanship. This chapter seeks to contribute to research in the area of political science with a conceptual framework that partisanship is a construct developed by internal and external factors unconscious to the voter. This conceptual framework strives to enhance existing research in the field, capitalizing on partisanship and voting studies by experts in the field.

The review begins with a discussion of the general background of political language and messaging in the U.S. Next, the review will discuss specific divisions amongst the electorate in how language is interpreted, and messaging is received. The interpretation of messaging can differ based on race, socio-economic status, region and many other general antecedents as well as cultural factors. Lastly, the review discusses the impact of political language on partisanship and elections. At the end of this section a summary of political messaging is provided as well as an introduction as to the case study method used to examine the 2018 U.S. midterm elections and the influence political messaging played on partisanship and outcomes

## REVIEW OF THE LITERATURE

Political language is an area widely studied by political scientists and scholars to understand the rhetoric and strategies used by politicians to influence perceptions of political parties and partisanship. Political communication is strategic; using language and semantics, politicians seek to create a picture of the world as it should be (or should not be), forming a desired reality based on values and issues along the left to right continuum<sup>28</sup>. The truth may be a given fact, but the reality that society perceives is a social construct built on metaphor, characterization and spin<sup>29</sup>. Political communication is a marketing strategy aimed at influencing voter opinion, like that which is found in the business arena<sup>30</sup>. Effective rhetoric in politics involves the selling of an image, and the strategic method from message, to channel, to receiver to construct public opinion<sup>31</sup>. For some scholars, the selling of an image is better framed as coercion rather than linguistics as some say that political rhetoric is rooted in control<sup>32</sup>. Politicians attempt to align the electorate to see the world through their lens. Successful political language positions a party or candidate to create a picture in voters' minds that cannot be distorted by the opposing candidate or party; politicians aim for voters to believe a series of events or circumstances in the way that they convey those events to be<sup>33</sup>. To understand political language is to understand effective communication and how a voter interprets information. The communication model pictured below shows the cognitive process of transmitting messages<sup>34</sup>

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<sup>28</sup> Zolyan, Suren. 2015. "Language and Political Reality: George Orwell Reconsidered." *Sign Systems Studies* 43 (1): 131–49. doi:10.12697/SSS.2015.43.1.06.

<sup>29</sup> Zarefsky, David. *President Johnson's war on poverty: Rhetoric and history*. University of Alabama Press, 2005

<sup>30</sup> Lock, Andrew, and Phil Harris. "Political marketing-vive la difference!." *European Journal of marketing* 30, no. 10/11 (1996): 14-24.

<sup>31</sup> Popkin, Samuel L., and Samuel L. Popkin. *The reasoning voter: Communication and persuasion in presidential campaigns*. University of Chicago Press, 1994.

<sup>32</sup> Krebs, Ronald R., and Patrick Thaddeus Jackson. "Twisting tongues and twisting arms: The power of political rhetoric." *European Journal of International Relations* 13, no. 1 (2007): 35-66.

<sup>33</sup> Krebs, Ronald R., and Jennifer K. Lobasz. "Fixing the meaning of 9/11: Hegemony, coercion, and the road to war in Iraq." *Security Studies* 16, no. 3 (2007): 409-451.

<sup>34</sup> <https://www.project-management-skills.com/definition-of-communication.html>



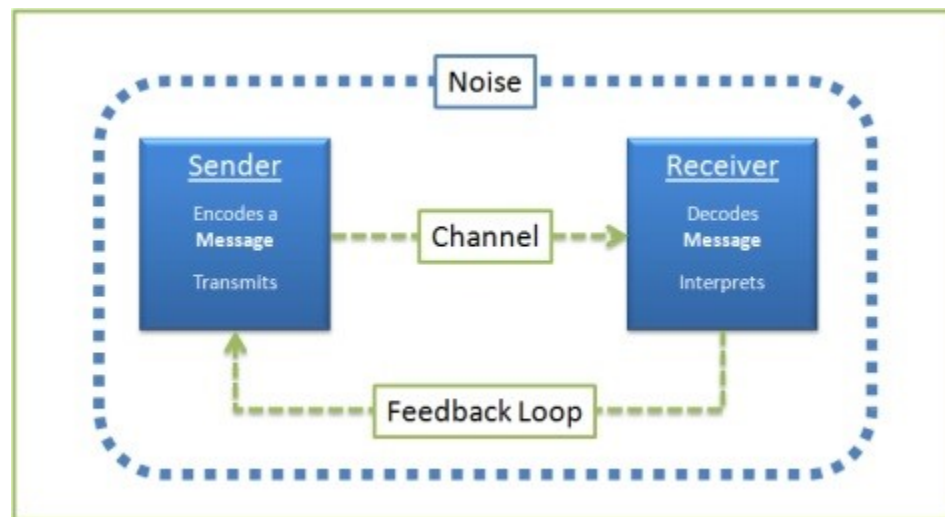


Figure 2: The Communication Model

It is important to analyze the communication model as it illustrates that messages are encoded by the sender through channels and decoded by the receiver. Perceptions and reactions to political language is largely dependent upon the receiver as scholars argue that political messages are perceived differently by varying demographics within the electorate<sup>35</sup>. However, there are common themes to political language that apply to voters at large. How the receiver of messages interprets the information is largely based on the manner and context in which it is received. For politicians, taking a firm position in communication is important to convey ideology and emotion.

***The best politicians' message with passion.*** As history has shown, successful political language contains passion and emotion in order to gain the support of voters. At one point in American politics, the ability to largely persuade voters was limited to the President, but over the last several decades scholars note that opinion persuasion happens across multiple levels and branches of government<sup>36</sup>. This expansion of passionate image crafting and persuasion is largely

<sup>35</sup> Huddy, Leonie. "From social to political identity: A critical examination of social identity theory." *Political psychology* 22, no. 1 (2001): 127-156.

<sup>36</sup> Jacobs, Lawrence R., and Robert Y. Shapiro. *Politicians don't pander: Political manipulation and the loss of democratic responsiveness*. University of Chicago Press, 2000.

due to the success of notable rhetorically savvy leaders such as President Franklin D. Roosevelt, John F. Kennedy, Ronald Reagan and many others<sup>37</sup>. Successful campaigns tug on the heartstrings of voters and create a variety of feelings and considerations about the issue. These emotions can vary from fear, to hope, to sadness and joy and politicians target these emotions through passionate messaging to frame issues and how voters should perceive them<sup>38</sup>. Edward G. Carmines and James A. Stimson (1990) note that there are three key areas that have effectively shifted the electorate and realigned partisanship on issues. These areas are issue preferences are deeply felt, parties and candidates must take up visibly different positions on an issue, and the issue must be long on the political agenda to have a lasting impression<sup>39</sup>. With this, politicians leverage national events or issues and speak passionately about them to gain the support of voters, particularly the undecided moderate or independent<sup>40</sup>. There are many issues that Americans are divided on; economics, gun control and healthcare are a few that have been common topics during election season. Gay marriage however became a spotlight issue in 2012 and the successful party discussed this issue with passion. The Grand Old Party are traditionalists by nature of their conservative values. Rather than conveying the importance of marriage as a sanctity or a destruction of American culture as a bond between a man and woman, GOP politicians took a back seat on the issue in 2012. Rather than refuting gay marriage, Republican politicians messaged a “truce” that the issue was a matter of federalism and was a

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<sup>37</sup> Thoemmes, Felix J., and Lucian Gideon Conway III. "Integrative complexity of 41 US presidents." *Political Psychology* 28, no. 2 (2007): 193-226; Mio, Jeffery Scott, Ronald E. Riggio, Shana Levin, and Renford Reese. "Presidential leadership and charisma: The effects of metaphor." *The Leadership Quarterly* 16, no. 2 (2005): 287-294.

<sup>38</sup> Ahmed, Sara. *The cultural politics of emotion*. Routledge, 2013; Valentino, Nicholas A., Ted Brader, Eric W. Groenendyk, Krysha Gregorowicz, and Vincent L. Hutchings. "Election night's alright for fighting: The role of emotions in political participation." *The Journal of Politics* 73, no. 1 (2011): 156-170.

<sup>39</sup> Carmines, E. G., & Stimson, J. A. (1980). The two faces of issue voting. *American Political Science Review*, 74(1), 78-91.

<sup>40</sup> Jacobs, Lawrence R., and Robert Y. Shapiro. *Politicians don't pander: Political manipulation and the loss of democratic responsiveness*. University of Chicago Press, 2000.

decision for the states or merely for the protection of tradition rather than messaging against the violation of a social norm<sup>41</sup>. Conversely, scholars note that Democratic politicians messaged love and equality, feelings that resonated with both liberal and conservative voters. This message, along with other successful campaign efforts supported the re-election of a Democratic U.S. President and passage of gay marriage laws across the U.S. The key victory for this issue was the passionate message of “love is love” that Democrats spoke to which influenced even traditionally conservative religious voters. Republicans could not campaign on hate; therefore, they were forced to concede the issue which conveyed to social conservative voters that gay marriage was not an important issue.

Passionate rhetoric can convey emotions such as love and equality in the case of gay marriage but can also convey emotions such as anger, sorrow and pity. With passionate rhetoric, politicians not only persuade, but also define<sup>42</sup>. After the assassination of President Kennedy, then VP Lyndon Johnson sought to create an image in the mind of the American people as he was in the shadow of the President Kennedy. President Johnson entered the executive office being regarded as generally a southern conservative and needed to amplify his image and message nationally to stretch beyond being regarded as a “regional politician.” According to scholars, only 5% of voters said they knew a great deal about President Johnson at the time of his inauguration as compared to 24% at the time of Kennedy<sup>43</sup>.

During President Johnson’s first State of the Union address in 1964, he declared the war on poverty to engage voters to recognize him for his own ideology rather than as an extension of Kennedy<sup>44</sup>. President Johnson launched his Great Society programs to battle poverty to garner

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<sup>41</sup> Gallagher, M., & Cannon, F. J. (2017). CULTURE IS DOWNSTREAM OF POLITICS: Maggie Gallagher and Frank Cannon urge a political plan for social conservatives. *First Things*, 278, 23–27.

<sup>42</sup> Zarefsky, David. *President Johnson's war on poverty: Rhetoric and history*. University of Alabama Press, 2005

<sup>43</sup> Zarefsky, David. *President Johnson's war on poverty: Rhetoric and history*. University of Alabama Press, 2005

<sup>44</sup> Zarefsky, David. *President Johnson's war on poverty: Rhetoric and history*. University of Alabama Press, 2005

support from Kennedy voters while at the same time enacting a program that was his alone. Scholars note that President Johnson specifically chose to lead the efforts to combat poverty as a “war” because of the military connotation the word has. President Johnson sought to rally the nation by metaphorically calling for the country to take arms to eliminate the evil that was poverty<sup>45</sup>. Johnson told stories of his own childhood experiences with poverty and how the disease that was destroying the youth and communities at large needed to be eliminated to rise to a new day of hope and prosperity. President Johnson knew that the national climate called for civility in a time surrounding the Vietnam War and wanted to charge Americans with caring for one another to have hope that the nation could eliminate poverty.

President Johnson’s “war on poverty” represented political symbolism which has been a rhetorical style rooted in metaphor that many leaders, including politicians, use to frame events in the mind of those listening<sup>46</sup>. Since Johnson, there have been many “wars” that politicians have declared including the war on terrorism, war on crime, war on drugs, war on childhood obesity etc. The issue that the war addresses is secondary to the symbolism that the war represents.

Symbolism is a key fundamental in political rhetoric. As previously noted, the goal of effective rhetoric is to move from truth to social reality by constructing a point of view from the vantage point of a politician and scaling it to align the electorate. Studies show that when politicians use symbols to represent an issue, it is more likely that a voter will remember the symbol and the issue it represents rather than the issue alone<sup>47</sup>. Political events are largely non-empirical and lack concrete facts or information<sup>48</sup>. The use of metaphor and symbols is a

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<sup>45</sup> Zarefsky, David. *President Johnson's war on poverty: Rhetoric and history*. University of Alabama Press, 2005

<sup>46</sup> Zarefsky, David. *President Johnson's war on poverty: Rhetoric and history*. University of Alabama Press, 2005.

<sup>47</sup> Read, Stephen J., Ian L. Cesa, David K. Jones, and Nancy L. Collins. "When is the federal budget like a baby? Metaphor in political rhetoric." *Metaphor and Symbol* 5, no. 3 (1990): 125-149.

<sup>48</sup> Edelman, Murray. *Politics as symbolic action: Mass arousal and quiescence*. Elsevier, 2013.

powerful tool for politicians as these figures add context to the passion that lawmakers attempt to convey. Symbols and metaphors in political rhetoric intensify the perceptions of political events and screen away opposing points of view<sup>49</sup>. Furthermore, metaphors presented by lawmakers such as a “war” make complicated issues or policies easier to understand for voters<sup>50</sup>. The use of metaphors helps to convey the magnitude that politicians want voters to think as issue is a threat to society.

In addition to symbolism, imagery also supports the context that rhetoric seeks to convey. According to scholars, a fearful face adds credibility to warnings of danger<sup>51</sup>. The coupling of rhetorical symbolism and imagery effectively creates a social reality through the lens of the politician or political party and becomes the accepted state of affairs from the electorate, should the rhetoric be conveyed in a compelling manner.

Experts also note that effective rhetoric involves continuity or change<sup>52</sup>. To convey passion, politicians aim to inspire voters to change the status quo, or create a reality where what has occurred has improved the lives of the electorate. Heuristics are often used in messaging to convey the need for continuity or change; the more politicians can use cues in their messages, the more a voter subconsciously believes that the need for continuity to change is their own<sup>53</sup>. Passion is conveyed in many ways, and often politicians frame issues to plant thoughts in the minds of voters to move the electorate to their direction.

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<sup>49</sup>Edelman, Murray. *Politics as symbolic action: Mass arousal and quiescence*. Elsevier, 2013.

<sup>50</sup> Mio, Jeffery Scott. "Metaphor and politics." *Metaphor and symbol* 12, no. 2 (1997): 113-133.

<sup>51</sup> Reed, Lawrence Ian, and Peter DeScioli. "Watch out! How a fearful face adds credibility to warnings of danger." *Evolution and Human Behavior* 38, no. 4 (2017): 490-495.

<sup>52</sup> Hollman, S. P., Umhofer, R., & Cury, L. (2015). *The Politics of Branding: Political Messaging, Fair Use and Infringement*. *Maryland Bar Journal*, 48(2), 14–19. Retrieved from

<sup>53</sup> Kuklinski, James H., and Norman L. Hurley. "On hearing and interpreting political messages: A cautionary tale of citizen cue-taking." *The Journal of Politics* 56, no. 3 (1994): 729-751.

*Fear is often a strategy used by politicians to mobilize voters.* With the increase in partisanship and voting after 1970, studies show that many politicians began to use fear rhetoric to align the increasingly politically astute voter<sup>54</sup>. Fear and attack communication have been documented as an extremely effective method of mobilizing voters and stimulating the political base<sup>55</sup>. There is no clearer example of this than to examine fear language through the lens of crime. The war on drugs has been documented as a successful use of spin to create moral panic and fear around an idea that stretches far beyond reality. According to some scholars, this can be seen through the rhetoric used in campaigns by Presidents and then candidates Reagan and Bush during the 1980's<sup>56</sup>. Some scholars have discussed political language and rhetoric as an attempt by politicians to become "social actors," simply using language to influence voters for the purpose of achieving political motives<sup>57</sup>. The 1960's and 1970's saw an increase in illegal drug use in the United States and with this, an increase in crime rates. Since then, there has been a steadily declining rate of criminal activity, however an increase in incarceration. Experts draw parallels between political rhetoric and incarceration since the 1960's<sup>58</sup>. In analyzing political messaging since this era, political psychologists have examined that Conservative politicians use "get tough" language to address crime and have framed crime as a social issue, although data has shown that amongst industrialized countries, the United States has a low and declining national crime rate and out of all crimes, only two-percent account for homicides and vicious crimes<sup>59</sup>.

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<sup>54</sup> Smith, Steven S., Jason M. Roberts, and Ryan J. Vander Wielen. *The American Congress*. Cambridge University Press, 2013.

<sup>55</sup> Finkel, Steven E., and John G. Geer. "A spot check: Casting doubt on the demobilizing effect of attack advertising." *American journal of political science* (1998): 573-595.

<sup>56</sup> Hawdon, James E. "The role of presidential rhetoric in the creation of a moral panic: Reagan, Bush, and the war on drugs." *Deviant Behavior* 22, no. 5 (2001): 419-445.

<sup>57</sup> Jackson, Richard. "Writing the war on terrorism: Language, politics and counter-terrorism." (2018).

<sup>58</sup> Beckett, Katherine, and Theodore Sasson. *The politics of injustice: Crime and punishment in America*. Sage Publications, 2003.

<sup>59</sup> Beckett, Katherine, and Theodore Sasson. *The politics of injustice: Crime and punishment in America*. Sage Publications, 2003.

These experts note that the framing of crime as an issue that threatens liberty, provides a rhetorical spin aimed at policies that aim for social control (military, law enforcement) and less social welfare. Historically, when conservative politicians aim to frame crime as an issue that voters need to fear, it increases perceptions of conservative candidates as protectors (particularly amongst suburban women). Since the 1980's conservative politicians have discussed crime as a breakdown of law and order aka Democratic leniency, while liberal politicians have discussed crime as a social issue of economic inequality<sup>60</sup>. Beckett and Sassoon (2003) discuss this concept of strategic language and rhetoric as the foundation for discrediting President Lyndon B. Johnson's Great Society initiatives and the change in Presidential Power from Democratic to Republican with the election of President Richard Nixon<sup>61</sup>. With his election came an increase in legislation targeted to "crack down" on crime and a national acceptance of criminality as a plague the GOP would rid society of<sup>62</sup>. The increase of the discussion of crime by GOP politicians, successfully made crime a national issue that voters feared and significantly realigned the electorate<sup>63</sup>.

Studies are inconsistent with the perceptions of voters about fear or attack ads to date. There are many case studies as noted above that highlight positive outcomes for candidates who utilize this style of framing to communicate with voters, while some researchers believe that by in large, communication that emotes negative feelings for voters is ineffective<sup>64</sup>, however clearly, it happens.

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<sup>60</sup> Edelman, Murray. *Constructing the political spectacle*. University of Chicago Press, 1988.

<sup>61</sup> Beckett, Katherine, and Theodore Sasson. *The politics of injustice: Crime and punishment in America*. Sage Publications, 2003

<sup>62</sup> Chernoff, Harry A., Christopher M. Kelly, and John R. Kroger. "The politics of crime." *Harv. J. on Legis.* 33 (1996): 527.

<sup>63</sup> Mendelberg, Tali. "Executing Hortons: Racial crime in the 1988 presidential campaign." *The Public Opinion Quarterly* 61, no. 1 (1997):

<sup>64</sup> Ansolabehere, S., & Iyengar S. (1995). *Going negative. How political advertisements shrink and polarize the electorate*. New York: Free Press.

*Political communication is inherently manipulative.* The political reality that rhetoric creates is from the perspective of the individual communicating it. Messages from political parties to the electorate are biased; they conscious or sub-consciously communicate the information with their own desired outcomes in mind. With this, the message that is communicated can be factual or an alternative fact to social reality<sup>65</sup>. Political scholars have found trends in rhetoric along party lines. As previously discussed, the fear tactic has been largely popularized by Conservatives, while Liberals use the “community trap.” When examining the left, scholars have discussed liberal rhetoric such as the community trap, aims to frame issues as beneficial for the community at large illuminating a political reality of the common good and will of the people<sup>66</sup>.

Politicians and political parties are also citizens. They grow into office from the communities in which they represent and understand from a cultural and values perspective, how to message in a way that will solicit positive reactions from the electorate. Experts in the field of political rhetoric refer to this as style<sup>67</sup>. For example, when discussing immigration, politicians can message this issue as the infiltration of enemies, or as refugees seeking “the American Dream.”

Through rhetoric and messaging, politicians not only convey an ideology, but also declare an action. For example, President Donald Trump’s 2016 campaign messaged “Make America Great Again.” The campaign message not only chimes an emotional chord for voters who were not pleased with the outgoing President’s accomplishments (or lack thereof), but also

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<sup>65</sup> Deming, W. Edwards, Productivity Quality, and M. I. T. Competition Position. "Press." Cambridge, Massachusetts (1982).

<sup>66</sup> Schimmelfennig, Frank. "The community trap: Liberal norms, rhetorical action, and the Eastern enlargement of the European Union." *International organization* 55, no. 1 (2001): 47-80.

<sup>67</sup> Zolyan, Suren. 2015. “Language and Political Reality: George Orwell Reconsidered.” *Sign Systems Studies* 43 (1): 131–49. doi:10.12697/SSS.2015.43.1.06.



established the intent to take action to return America to a time where it was “great.” For some voters this was nostalgia and brought hopes of reversing the hands of time in their lives to be lived again. For Donald Trump and his supporters, America was not great in 2016 and for voters constructing their social opinions, this campaign message prompted consideration for if America was no longer great. For some political scientists, the “Make America Great Again” campaign was nothing more than spin and rhetorical manipulation. Some argue that the nostalgia to making America great was rooted with intentions to promote racist nativism and white supremacy<sup>68</sup>. For some, the pre-civil rights era was a great time; for others it was a blemish in American history. No one will ever know the true intention of “Make America Great Again” however it is widely discussed that the goal was to reverse America to a time in the past.

Voters have become more literate and have access to information more than ever. With this, social media and pop culture have shaped political rhetoric, spin and the ability for politicians so persuade voters. Studies show that people seek out opinions and perspectives like their own<sup>69</sup>, so politicians leverage social media to manipulate audiences based on strategic rhetoric designed to influence voters that share their ideology. The internet has been a significant contributor to political messaging and greatly influence how and in what context, voters perceive information regardless of partisanship<sup>70</sup>. According to the Pew Research Center for the People, ten percent of voters under the age of 30 either “friended” or “liked” the page of one of the 2008 US Presidential candidates. With this, social media has contributed to an increase in political engagement amongst voters, so candidates use this as a tool. These platforms

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<sup>68</sup> Huber, Lindsay Perez. "Make America Great again: Donald Trump, Racist Nativism and the Virulent Adherence to White Supremacy Amid US Demographic Change." *Charleston L. Rev.* 10 (2016): 215.

<sup>69</sup> Festinger, Leon. *A theory of cognitive dissonance*. Vol. 2. Stanford university press, 1962.

<sup>70</sup> Kim, Yonghwan. "The contribution of social network sites to exposure to political difference: The relationships among SNSs, online political messaging, and exposure to cross-cutting perspectives." *Computers in Human Behavior* 27, no. 2 (2011): 971-977.

not only allow politicians to message to constituents but allow voters to post reactions and opinions about the candidates/parties<sup>71</sup>.

Voters do not always seek information, so politicians aim to strategically place information via the use of advertising on television and the internet to communicate to voters. Studies show that the use of television advertising encourages voters to seek out additional information and increase their civic engagement<sup>72</sup>. Overall, whether through strategic placement of communication or through stylistic rhetoric, political communication is designed to manipulate voters and mobilize the electorate whether the message is true or false. Political messages are not under oath.

*Effective political rhetoric involves identity and group politics.* As previously noted, decoding political language varies depending on the individual receiving the message. Political messages are a matter of interpretation, so politicians message community values because if it is important to the community, it will be important to the voter. Studies show that voters adopt messages from politicians who they believe share their values, and often connect values to political parties<sup>73</sup>. When it comes to messaging and connecting with voters, experts agree that Conservative politicians have been far more successful with leveraging the family as a means of connecting to voters as compared to their liberal colleagues<sup>74</sup>. To be conservative is to inherently be traditional, so GOP politicians have been documented as successfully tying in family morals and values that speak to households, not individuals.

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<sup>71</sup> Smith, A. (2009a). The Internet's role in campaign 2008. <[http://www.pewinternet.org/?/media/Files/Reports/2009/The\\_Internets\\_Role\\_in\\_Campaign\\_2008.pdf](http://www.pewinternet.org/?/media/Files/Reports/2009/The_Internets_Role_in_Campaign_2008.pdf) (retrieved 15.04.09).

<sup>72</sup> Shah, Dhavan V., Jaeho Cho, Seungahn Nah, Melissa R. Gotlieb, Hyunseo Hwang, Nam-Jin Lee, Rosanne M. Scholl, and Douglas M. McLeod. "Campaign ads, online messaging, and participation: Extending the communication mediation model." *Journal of communication* 57, no. 4 (2007): 676-703.

<sup>73</sup> Nelson, Thomas E., and Jennifer Garst. "Values-based political messages and persuasion: Relationships among speaker, recipient, and evoked values." *Political psychology* 26, no. 4 (2005): 489-516..

<sup>74</sup> Lakoff, George. "Moral politics: What conservatives know that liberals don't." (1997).

Tribalism also plays a key cognitive role in the perception of messages. Humans innately identify with a group whether it is through ethnicity, gender and other forms of collective identity<sup>75</sup>. With this, politicians leverage this as a tool to market messages. Experts note that Black voters interpret message about issues in the African American community differently depending on if Jesse Jackson discusses it, or George Bush<sup>76</sup>. Understanding this, political parties leverage people who seem like a “familiar face” to a group or utilize persuasive figures in a community to convey a message and persuade voters.

Family plays a pivotal role in the reaction voters have to political language. Hatemi et. al (2010) notes that an individual’s family plays a key cognitive role in their social and political attitudes and outlook<sup>77</sup>. Priorities and mores that families instill in their children will often influence their beliefs in adulthood. Politicians know this, which is why there is little attempt to message to demographics that not traditionally voted for their party, or in contrast, market issues in a way that has historically mobilized the electorate generation after generation. Beliefs and values that are made to be a priority in an adolescent’s life by the family will influence their outlook on the world which includes political beliefs and perceptions<sup>78</sup>. In a 1991 study of partisanship and political attitudes, Beck & Jennings found that family tradition plays an overwhelming influence on attitudes about political parties until later young adulthood (early 30’s). Politicians also recognize the influences of religious groups and families in this context. Studies show that Evangelical and Catholic Christians overwhelmingly vote Republican while

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<sup>75</sup> Bruner, Edward M. "Ethnography as narrative." *Memory, identity, community: The idea of narrative in the human sciences* (1997): 264-280.

<sup>76</sup> Kuklinski, James H., and Norman L. Hurley. "It's a matter of interpretation." *Political persuasion and attitude change* (1996): 125-144.

<sup>77</sup> Hatemi, P. K., Hibbing, J. R., Medland, S. E., Keller, M. C., Alford, J. R., Smith, K. B., ... & Eaves, L. J. (2010). Not by twins alone: Using the extended family design to investigate genetic influence on political beliefs. *American Journal of Political Science*, 54(3), 798–814.

<sup>78</sup> Khine, M. Swe. (2008). *Knowing, Knowledge and Beliefs: Epistemological Studies across Diverse Cultures*. Dordrecht: Springer Netherlands

Protestant Christian denominations vote Democrat<sup>79</sup>. Family traditions with religion and upbringing often has a direct impact on voter perceptions, and politicians understand this when communicating.

Socialization also plays a role in the perceptions of political parties and messages. Jennings & Kent (2015) discuss Bandura's theory of socialization when examining the family influence of voters. He notes that the person, particularly the younger person, learns by observing the behavior of others<sup>80</sup>. Learners observe model behavior and begin to process associations with these actions. At a macro level, this theory supports the idea that a family's partisanship and perceptions greatly impact the voters party affiliation. At a micro level, this theory presumes that family values greatly impact reactions to party messaging. For example, if a close family member of a voter is a military veteran and this association was observed to be important by the voter, then a political party that messages military strength and support will likely solicit a positive reaction from the voter. By contrast, a political party that does not prioritize the military in their messaging will likely solicit negative reactions from the voter. Family and tribalism have a significant impact on politics and political messaging. In many ways, identity messaging is a form of spin, as political messaging is naturally manipulative.

This literature review informed the reader of emergent themes in the area of political rhetoric and messaging. Research suggests that through messaging, politicians seek to distort and mystify information to sell an image of party or candidate ideology rather than policy. With this, it is consistent amongst scholars that political language is inherently manipulative, creating perceptions of a myriad of feelings including fear, and hope amongst other emotions. The

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<sup>79</sup> Layman, Geoffrey C. "Religion and Political Behavior in the United States: The Impact of Beliefs, Affiliations, and Commitment From 1980 to 1994." *The Public Opinion Quarterly* 61, no. 2 (1997): 288-316.

<sup>80</sup> Jennings, M. Kent, & Niemi, R. G. (2015). *Political Character of Adolescence : The Influence of Families and Schools*. Princeton: Princeton University Press

interpretation of political messages greatly impacts partisanship and political attitudes.

Heuristics, symbolism and metaphor all add context to rhetoric and help to convey the social reality that politicians seek to create through imagery. In addition to this, family, tribalism and religion are all antecedent qualities that impact message interpretation and politicians leverage these to frame issues or policy based on the values that resonate with voters as relative to their religious background and family values. The next section of this thesis is the case study which aims to align or challenge these deductive emergent themes in the literature against the messaging strategy used in the United States 2018 Midterm elections.

## CASE STUDY

This case study seeks to measure the emergent themes analyzed in the literature review against the 2018 United States Midterm elections. Political rhetoric is always present in campaign and party messaging and this analysis seeks to examine if the principles of understanding political communication are relevant to this study. Political communication is an area widely studied for decades and many of the findings from research has been consistent. This case study aims to support the consistencies of decades of themes or challenge these principles with new party leaders, candidates and an increasingly informed electorate.

As with most midterm election in the United States, the 2018 election cycle was largely a temperate check and report card on the performance of sitting President Donald J. Trump. The political language used by President Trump in his ascend to the nation's highest office has been well documented. Scholars have described his choice of framing issues and communication as divisive, dishonest and nationalist<sup>81</sup>-all characterizations that one would assume would not lead to election, but it did. I would argue that Donald Trump applies the principles discussed in the literature review to his own rhetorical practices and effectively aligning his base of supporters. This style of political communication is not unknown to U.S. politics, but is one that has now come to the forefront of rhetorical cross-examinations. President Trump has been classified as a "populist" by some scholars, and they argue that his choice of tone and style in his messaging conveys that he is "like everyone else."<sup>82</sup> This approach, could largely be the engine behind what was seen as an impossible election into office.

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<sup>81</sup> Lockhart, P. R. "Trump Rhetoric Pits New Immigrants Against African Americans and Latinos." Mother Jones (2017).

<https://www.cnn.com/videos/politics/2018/11/19/trump-brash-political-style-pamela-brown-lead-pkg-vpx.cnn>

<sup>82</sup> <https://qz.com/965004/rhetoric-scholars-pinpoint-why-trumps-inarticulate-speaking-style-is-so-persuasive/>

Now, as the leader of the Republican Party, the President Trump had considerable influence on election outcomes, as most sitting President's do while in office. This case study aims to understand if the emergent themes: effective manipulation, messaging with passion, using fear to mobilize voters, the use of identity politics can be applied in analyzing the messaging by President Trump on the campaign trail. It is important to note that midterm elections are not presidential elections, but the President's rhetoric is analyzed as the party leader during a congressional and state election cycle. For the purposes of this study, I look to assess the rhetorical strategy against the literature from a macro point of view. There are thousands of candidates involved in midterm elections. For the purposes of brevity and understanding the greater contributions of semantics in rhetoric, the analysis does not take a micro perspective in terms of stratifying commentary by party, candidate, etc. This case study does not seek to measure the impact of messaging on election outcomes, but rather the approach messages took against the themes found in the literature review. An analysis of outcomes is suggested for further research as an empirical analysis of the rhetorical impact on election results.

Along the campaign trail, President Trump was an active communicator to constituents across the United States through a variety of channels. The President took out news ads, leveraged social media, hosted rallies and spoke with the press on a regular basis to position Republican candidates positively heading into election day.

***The best politicians' message with passion.*** The literature notes that it is important for candidates and politicians to take firm positions on issues and to convey them in a way that resonates with the emotional conscious of voters. The literature does not qualify whether these emotions need to be "positive" as the definition of a positive political viewpoint is largely dependent the ideology around the issue. President Trump was very active on the campaign trail

during the 2018 midterm elections. He went city to city, rallying his base to vote Republican because of positions on many issues on the ballot.

During rallies, Trump made clear that the leading issues for him at the polls were Justice Brett Kavanaugh, the caravan of immigrants traveling to the U.S., law and order and common sense<sup>83</sup>. The President addressed attendees at rallies with a direct tone and become animated during discussions; clearly articulating his position on the leading issues. Voters at an Iowa rally chanted “lock her up [Sen. Dianne Feinstein]” signaling alignment with President Trump on the issue of the confirmation of Justice Brett Kavanaugh. At nearly every rally, chants erupted throughout the crowd, backing President Trump on the leading issues. In looking at syntax and semantics, President Trump was able to speak with passion by connecting with voters that he was “one of them” as described earlier in the suggestion of President Trump as a populist.

Voter turnout for the midterms reached the highest participation seen in over fifty years.<sup>84</sup> Depending on how you analyze the outcomes, one could say that participation was a positive or negative reaction to the political rhetoric of the campaign. Nevertheless, from either perspective, President Trump messaged with passion that energized civic engagement nationwide.

***Fear is often a strategy used by politicians to mobilize voters.*** In political communication, often time fear is closely connected to racism. This can be seen in campaigns from the George H. W. Bush campaign and the “Willie Horton” effect, as well as the 2018 midterm elections. Behind the lead of President Trump, advertisements and fear rhetoric surged during the 2018 midterm elections; much centered around framing immigration as danger<sup>85</sup>. As discussed in the literature review, the GOP has a history of sewing fear into the messaging

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<sup>83</sup> <http://fortune.com/2018/10/19/trump-midterm-elections-2018-issues/>

<sup>84</sup> <https://www.npr.org/2018/11/08/665197690/a-boatload-of-ballots-midterm-voter-turnout-hit-50-year-high>

<sup>85</sup> <https://www.cnn.com/2018/10/14/politics/immigration-campaign-ads-midterms/index.html>



strategy to solicit voter interest and realign the electorate. From my perspective, President Trump used fear to communicate the Republican position on immigration in the United States. In some cases, immigration was not mutually exclusive to racism-tying a fear of invading illegals to invading brown people. A week before election day, President Trump tweeted a 53-second video that showcased asylum seeking immigrants traveling from South America portrayed as invaders in a caravan, compromising the safety and security of Americans<sup>86</sup>. This video was not only shown on Twitter (leveraging the power of social media), but also on select television networks. The video showed an undocumented Latino male convicted of murdering two police officers along with a caravan of immigrants-tying immigration to murder.

This approach continued political language used during his own election campaign where President Trump described Mexicans as drug dealers, rapists and criminals<sup>87</sup>. Many politicians up for election followed this same approach<sup>88</sup>. Rep. Marsha Blackburn vying for the Tennessee Senate seat also used rhetoric in her campaign describing the caravan of immigrants as gang members, people from the Middle East and possible terrorists<sup>89</sup>. According to Professor Kevin Kruse “Republican candidates do seem to be following the proven Trump blueprint of appealing to the fears and prejudices of white voters to a considerable degree.<sup>90</sup>” Considering the parallels between the use of fear and racism in his Presidential campaign, it is no surprise that this same tactic was weaved into the political rhetoric for the midterm elections. It has been proven to be a winning strategy for a variety of reasons. First, this approach energizes a voting demographic

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<sup>86</sup>[https://www.realclearpolitics.com/video/2018/10/23/trump\\_on\\_caravan\\_we\\_will\\_do\\_whatever\\_we\\_have\\_to\\_theyr\\_e\\_not\\_coming\\_in.html](https://www.realclearpolitics.com/video/2018/10/23/trump_on_caravan_we_will_do_whatever_we_have_to_theyr_e_not_coming_in.html)

<sup>87</sup> <https://www.bbc.com/news/av/world-us-canada-37230916/drug-dealers-criminals-rapists-what-trump-thinks-of-mexicans>

<sup>88</sup> <https://www.cnn.com/2018/10/14/politics/immigration-campaign-ads-midterms/index.html>

<sup>89</sup> [https://www.washingtonpost.com/politics/2018/11/05/warnings-celebrities-emotional-appeals-here-are-closing-arguments-ahead-midterm-election/?utm\\_term=.0a04a2d3238d](https://www.washingtonpost.com/politics/2018/11/05/warnings-celebrities-emotional-appeals-here-are-closing-arguments-ahead-midterm-election/?utm_term=.0a04a2d3238d)

<sup>90</sup> <https://www.usatoday.com/story/news/politics/elections/2018/11/07/2018-midterms-gop-candidates-racist-rhetoric-campaign-ads/1919980002/>

(likely partisan as these voters are known to have higher levels of engagement at the polls).

Second speaks to voters who no longer want to be ashamed of their racist ideology. And third because it distorts and places fear into undecided voter's minds. The use of fear creates panic, and panic drives people to the polls<sup>91</sup>. The effectiveness of the use of fear in messaging is not the purpose of this analysis, so I will not argue if this was successful in the 2018 election cycle. For all intense purposes, fear is a strategy used by politicians to mobilize voters as proven by the Trump/Republican rhetoric this election year.

***Political communication is inherently manipulative.*** The literature notes that messages from political parties to the electorate are biased; they conscious or sub-consciously communicate the information with their own desired outcomes in mind. The goal of political rhetoric is to persuade voters, so in analyzing the 2018 midterm elections, President Trump at times seemed to say and frame issues to persuade voters to vote Republican. Political communication is a matter of interpretation and President Trump seemingly sought to distort issues by framing his rhetoric. On the campaign trail, President Trump declared to voters that if Democrats win, they will lose their wealth and they have no one to blame but themselves<sup>92</sup>. Spin and strategic framing could be seen during the 2018 election cycle particularly when discussing immigration as previously discussed. President Trump was on a mission to energize voters by addressing issues through his lens, creating a social reality for voters to see as he framed them to be. One example of manipulative rhetoric was Trump's discussion of the confirmation process of Justice Brett Kavanaugh while on the campaign trail. The President stated during a campaign rally in Missouri "What they [Democrats] did to Brett Kavanaugh and his beautiful family is a

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<sup>91</sup> Hawdon, James E. "The role of presidential rhetoric in the creation of a moral panic: Reagan, Bush, and the war on drugs." *Deviant Behavior* 22, no. 5 (2001): 419-445.

<sup>92</sup>[https://www.realclearpolitics.com/video/2018/10/16/trump\\_if\\_democrats\\_win\\_if\\_people\\_dont\\_go\\_out\\_and\\_vote\\_then\\_they\\_have\\_themselves\\_to\\_blame.html](https://www.realclearpolitics.com/video/2018/10/16/trump_if_democrats_win_if_people_dont_go_out_and_vote_then_they_have_themselves_to_blame.html)

national disgrace that will not be soon forgotten. Remember that! And come Election Day, Americans will remember Kavanaugh." Perhaps Americans did remember Kavanaugh when casting their ballots, although like rhetoric, that outcome is up to interpretation.

*Effective political rhetoric involves identity and group politics.* According to scholars, voters adopt messages from politicians who they believe share their values, and often connect values to political parties<sup>93</sup> When it comes to messaging and connecting with voters, the GOP has become experts in family and values messaging. President Trump had this strategy on full display throughout his communication to voters. On the campaign trail, President Trump held rallies primarily in the Midwest and South where traditional values of family are common amongst voters. Leveraging the attention surrounding Supreme Court Justice Brett Kavanaugh, President Trump proclaimed during the campaign cycle that the aftereffects of the confirmation process indicated that the country was in a scary time for men and boys who could be accused of doing something that they did not do. This rhetoric seemed to be an attempt to connect with voters who valued family, particularly women. Additionally, group and identity politics can be seen in the messaging around immigration. When discussing immigration to these voters at rallies, President Trump made inferences that illegal immigrants attempting to enter the country were a threat to family and that Democrats were supporting this threat. He declared that women wanted border security to feel safe; appealing to the traditional (yet outdated) family structure where men protect women.

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<sup>93</sup> Nelson, Thomas E., and Jennifer Garst. "Values-based political messages and persuasion: Relationships among speaker, recipient, and evoked values." *Political psychology* 26, no. 4 (2005): 489-516..

## CONCLUSION

As previously discussed, the goal of this case study was not to draw conclusions as to the impact of messaging on the outcomes of the 2018 United States midterm elections, but to analyze the rhetoric used on the campaign trail against the themes discussed in the literature review. Across all thematic discussions of political language, the rhetoric of President Trump was consistent in echoing points discussed in the literature. President Trump was able to effectively motivate voters (both positively and negatively) through his strategic use of framing issues, passionate diction and firm stance on issues, the use of identity politics and overall manipulation. By manipulation, there is no intent to describe the rhetoric as negative. Rather an observation that President Trump was able to paint a social reality to voters by channeling identity politics and the spin. Ultimately it is the duty of voters to decide if the social reality that all politicians create is a world they want to live in and make decisions at the polls to reflect this.

## CHAPTER TWO: THE USE OF RACE IN POLITICS

One of the deep-rooted traditions in American politics is the use of race to align the electorate, create divisions amongst people and create a need for government or government reform<sup>94</sup>. By creating fear of a group of people, politicians have mobilized voters to shape political and election outcomes. Studies show that as American's mourn national events such as 9/11 and murders, politicians leverage these events to create a social reality that voters should be afraid of the people (primarily minorities), rather than the event itself<sup>95</sup>. Examples of this can be seen through President George H.W. Bush's "Willie Horton" crime rhetoric and President Donald J. Trump's use of the "immigrant caravan" as advocacy to push Congress to secure funding for his proposed wall on the southern border in the name of safety and security.

This chapter seeks to understand how does the use of race shape political attitudes and outcomes in the United States? The researcher addresses this question with the conceptual framework that the use of racial identities in politics is central to the shaping of political attitudes in both positive and negative ways. This is evidenced through both social and economic policy platforms and positions, particularly at the federal level. The purpose of this chapter aims to add to a body of work on the culture of American politics and the strategic use of racial identity to influence political attitudes. These attitudes and perceptions, which are authored by politicians are ultimately a threat to democracy and the freedom for Americans to develop their own political attitudes. This paper is divided into four parts: introduction, literature review, a case study analyzing three historical events where race was targeted to gain political influence and conclusion.

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<sup>94</sup>Marable, Manning. *The great wells of democracy: The meaning of race in American life*. New York: Basic Books, 2002;

<sup>95</sup>Finkel, Steven E., and John G. Geer. "A spot check: Casting doubt on the demobilizing effect of attack advertising." *American journal of political science* (1998): 573-595.

## REVIEW OF LITERATURE

According to some political scientists, political rhetoric is a form of psychology; enlightened statemen creating a social reality to voters for the purpose of political gain and power<sup>96</sup>. Some experts discuss that social science theories such as Darwinism and the theory of natural selection provided a pathway for the use of race in shaping political in the United States both past and present<sup>97</sup>. As 18<sup>th</sup> century politicians sought to impose slavery and white supremacy into the fabric of American culture, European scholars such as Herbert Spencer's writings around survival of the fittest (an expanded form of Darwinism) became platforms for racial propaganda in government policies and practices<sup>98</sup>.

The broader theme of racial use in politics is fear, and fear is not a new political idea. Experts agree that the use of race in politics is born from the fear rhetoric that was the foundation of the American Founding Fathers campaign for a "more perfect union" designed to control unruly citizens<sup>99</sup>. Leveraging the fear of a gruesome death as well as man's state of nature being selfish greed, American government was born in the 1700's. The early works of Sir Thomas Hobbes, specifically "Leviathan" amongst many other foundational political philosophers set the stage for fear language within American political thought. Hobbes sought to contribute to political thought by expressing the need for government over people; for a lack of law and order would result in a war amongst citizens as he believed, the state of nature of man was intrinsically

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<sup>96</sup> Deming, W. Edwards, Productivity Quality, and M. I. T. Competition Position. "Press." Cambridge, Massachusett (1982).

<sup>97</sup> Walton Jr, Hanes, Cheryl M. Miller, and Joseph P. McCormick II. "Race and political science: The dual traditions of race relations politics and African-American politics." *Political Science in History: Research Programs and Political Traditions* (1995): 145-174.

<sup>98</sup> Walton Jr, Hanes, Cheryl M. Miller, and Joseph P. McCormick II. "Race and political science: The dual traditions of race relations politics and African-American politics." *Political Science in History: Research Programs and Political Traditions* (1995): 145-174.

<sup>99</sup> Robin, Corey. Fear: The history of a political idea. Oxford University Press, 2004.

evil<sup>100</sup>. Montesquieu continued this foundation with his discussion of democracy and the fear of despotism entering the European fabric. Montesquieu suggested to readers that the absolute rule of a monarchy was designed to rob citizens of liberty and their rights and that despots were aiming to make people afraid. By virtue of this social reality Montesquieu painted (based on something he himself had not experienced), he subsequently made people fear the rule of an autocratic ruler<sup>101</sup>. It is well documented that these theories were used to develop the democratic way of life in America-the more the people believed there was something to fear, the more there was a need for a government where enlightened men ruled over men<sup>102</sup>. In the Federalist Papers, specifically Federalist 10, James Madison profoundly introduced the idea of “factions” to the American people as a justification for the need to have centralized government. There has been debate amongst scholars about the legitimacy of the cause of anarchy, as some cite that the law and order education during the 1700’s was limited to Latin and Greek sources, while others say that the basis for the republic was largely limited to Rome and France<sup>103</sup>. Some scholars extend the argument noting that Madison’s case for factions is largely fictional; an unruly people out to overthrow government to achieve their selfish desires and harm the collective good of the union<sup>104</sup>. As Madison, Hamilton and Jay continued their discussion of a union throughout the Federalist Papers, the intersectionality between policy and fear is consistent through the discussion of the social consequences of no federal government.

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<sup>100</sup> Hobbes, Thomas. "Leviathan, or, The matter, forme, & power of a common-wealth ecclesiasticall and civil." (2010).

<sup>101</sup> De Montesquieu, Charles. Montesquieu: The spirit of the laws. Cambridge University Press, 1989.

<sup>102</sup> Robin, Corey. Fear: The history of a political idea. Oxford University Press, 2004.

<sup>103</sup> Bederman, David J. The Classical Foundations of the American Constitution: Prevailing Wisdom. Cambridge University Press, 2008; Natelson, Robert G. "A Republic, Not a Democracy--Initiative, Referendum, and the Constitution's Guarantee Clause." Tex. L. Rev. 80 (2001): 807.

<sup>104</sup> Madison, James, J. Jay A. Hamilton, and John Jay. The federalist. Tudor Pub, 1947.

. Political rhetoric in the context of fear took a turn with the election of President Franklin D. Roosevelt. Coming into office on the heels of the Great Depression, President Roosevelt sought to eradicate fear from the hearts of Americans. In his inaugural address, President Roosevelt declared to the nation that the only thing we must fear is fear itself. President Roosevelt outlined his plan to get Americans back to work, and with the protection of God and support of the new Congress and forty-eight states, the nation would get past the financial crisis of the present. Scholars have noted that President Roosevelt's inaugural address had a remarkable impact on the country as he sought to align the nation to walk out of darkness<sup>105</sup>. He was able to convey to the nation through his strategic use of words, an image of what America could become with their support of his plan<sup>106</sup>. Many experts believe that this rhetorical style of greatness and hope led to Roosevelt's re-election for four terms. With the success that President Roosevelt rendered with hope rhetoric, it is noteworthy to consider why this approach is not implemented consistently amongst succeeding politicians post New Deal era.

Nevertheless, even with the success of President Roosevelt's approach to combating fear and uplifting the country, negative rhetoric has continued to be a part of the political fabric of politicians from the days after Roosevelt, to the present. Scholars note that the approach for office holders, particularly the President of the United States, changed with the assassination of President John F. Kennedy which was largely seen as a failure of the federal government to ensure safety and security of the chief executive<sup>107</sup>. The period post-Kennedy has been discussed as the decline of the "New Deal President" and the return of the "Prosecutor in Chief"

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<sup>105</sup> Houck, Davis W. *FDR and fear itself: The first inaugural address*. No. 7. Texas A&M University Press, 2002.

<sup>106</sup> Emrich, Cynthia G., Holly H. Brower, Jack M. Feldman, and Howard Garland. "Images in Words: Presidential Rhetoric, Charisma, and Greatness." *Administrative Science Quarterly* 46, no. 3 (September 2001): 527–57. doi:10.2307/3094874.

<sup>107</sup> Simon, Jonathan. *Governing through crime: How the war on crime transformed American democracy and created a culture of fear*. Oxford University Press, 2007.



creating a gateway for increased fear rhetoric and the decline of the political euphoria leading up until the 1960's<sup>108</sup>.

Modern day politicians leverage fear, specifically fear of a group of people based on race or ethnicity to accomplish the same outcomes as the foundational political philosophers- influence voters to believe that there an imminent threat to safety and security to achieve political outcomes. Political Scientist Corey Robin provides context to this school of thought that fear, specifically fear of a race or ethnic group is political because it is widespread and born from a societal event or struggle-much like the struggle between the Federalist's and Anti-Federalists to create a federal government for the United States. Robin continues in his works on politics and fear by citing modern examples of this such as the tension between the United States and radical Islam or law enforcement and the Black community. These writings and thoughts support the hypothesis that use of race shapes political attitudes in both positive and negative ways, however, ultimately is a threat to democracy.

The use of racial identities to shape political attitudes has threatened democracy and free thought as a voting citizen. Politicians aim to create a need for government by manipulating voters to fear a race to achieve support for policy such as "tough on crime" legislation or election outcomes such as "Make America Great Again" (which can be connected to racial divisions with the nationalist undertones that the campaign platform sought to achieve). According to some political scholars such as political scholar Howard Schuman and Professor Charles Gallagher, the use of race in politics is particularly effective because of the polarizing contrasts in the perception of racial inequity amongst Americans. According to these scholars, Black and Latino voters largely view access and opportunity in the United States to be imbalanced and support

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<sup>108</sup> Simon, Jonathan. *Governing through crime: How the war on crime transformed American democracy and created a culture of fear*. Oxford University Press, 2007.

programs such as affirmative action and the ability to achieve the American Dream while white voters largely view racial inequity as an issue that the United States has moved on from. Furthermore, white voters believe that very few of them benefit from white privilege; and that one's place of the socio-economic hierarchy is based on hard work, regardless of skin color-making their lens of politics and society as "colorblind"<sup>109</sup>."

***Political use of race is purposeful.*** Dr. Ben Ginsberg once said, "politics is all about money, power and status." Channeling this notion of the pursuit of some special interest or personal gain, politicians must appeal and shape the electorate in their favor so that they can achieve the end goal of money, power or status through election or policy. Managing a diverse country like the United States, politicians spend just as much time shaping their impression to the world as they do shape policy in Washington<sup>110</sup>. This shaping of impression amongst voters is in many ways a form of manipulation which has often been cited to be the main purpose of political rhetoric as a whole<sup>111</sup>. When politicians use race, there is a goal in mind. Scholars such as Dick Pels, Ruth Wodak and HL Menchken agree that the goal of the use of racial fear rhetoric is to keep the electorate alarmed and convince them that they [politicians] are the best candidate or leader to keep voters safe from harm<sup>112</sup>. Often, politicians along with enabling media outlets blow dangers out of proportion for votes, ratings and profits. Issues or incidents that are isolated are

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<sup>109</sup> Schuman, Howard, Charlotte Steeh, Lawrence Bobo, and Maria Krysan. 1997. *Racial Attitudes in America*. Cambridge, MA: Harvard University Press; Gallagher, Charles A. "Color-blind privilege: The social and political functions of erasing the color line in post-race America." *Race, Gender & Class* (2003): 22-37.

<sup>110</sup> Wilson, Molly J. Walker. 2015. "The Rhetoric of Fear and Partisan Entrenchment." *Law & Psychology Review* 39: 117–60.

<sup>111</sup> Lupia, Arthur, and Jesse O. Menning. "When can politicians scare citizens into supporting bad policies?" *American Journal of Political Science* 53, no. 1 (2009): 90-106.

<sup>112</sup> Wodak, Ruth. *The politics of fear: What right-wing populist discourses mean*. Sage, 2015.; Wilson, Molly J. Walker. 2015. "The Rhetoric of Fear and Partisan Entrenchment." *Law & Psychology Review* 39: 117–60.

communicated as growing trends to confound society<sup>113</sup>. Former National Security Advisor

Brzezinski notes in his discussion of the “war on terror” the following:

*“The ‘war on terror’ has created a culture of fear in America. The Bush administration's elevation of these three words into a national mantra since the horrific events of 9/11 has had a pernicious impact on American democracy, on America's psyche and on U.S. standing in the world. Using this phrase has actually undermined our ability to effectively confront the real challenges we face from fanatics who may use terrorism against us...But the little secret here may be that the vagueness of the phrase was deliberately (or instinctively) calculated by its sponsors. Constant reference to a “war on terror” did accomplish one major objective: It stimulated the emergence of a culture of fear. Fear obscures reason, intensifies emotions and makes it easier for demagogic politicians to mobilize the public on behalf of the policies they want to pursue.”<sup>114</sup>*

The war on terror demonstrated highlights of patriotism and combating terror and lowlights of a fear of middle eastern and Muslim peoples-the administration successfully created a social panic of these groups more so than a fear of terror as a general world event. When politicians divide, they conquer. Notably, although inadvertently [at times], the continued use of impression management polarizes groups within the electorate; those who impressions resonate with distance from those who the impression does not resonate with<sup>115</sup>. Politicians use inflammatory language like the use of us versus them to convey passion about an issue, and strong in their opinions<sup>116</sup>. Experts say that most politicians are unwilling to compromise or see an alternative point of view as this strategy is most advantageous in a two-party system<sup>117</sup>. Fear rhetoric is divisive in nature and encourages the electorate to become tunnel vision to one point of view, ultimately dividing voters and galvanizing like-minded supporters to endorse an issue.

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<sup>113</sup> Glassner, Barry. *The Culture of Fear: Why Americans Are Afraid of the Wrong Things: Crime, Drugs, Minorities, Teen Moms, Killer Kids, Muta*. Basic books, 2010.

<sup>114</sup> <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/23/AR2007032301613.html>

<sup>115</sup> Cass R. Sunstein, *The Law of Group Polarization*, 10 J. POL. PHIL. 175, 176 (2002)

<sup>116</sup> Cass R. Sunstein, *The Law of Group Polarization*, 10 J. POL. PHIL. 175, 176

<sup>117</sup> Cass R. Sunstein, *The Law of Group Polarization*, 10 J. POL. PHIL. 175, 176

During difficult times, politicians turn to fear language rather than collaboration to paint opposing views as risk<sup>118</sup>.

One need not turn to the year 2001 and the post 9/11 political rhetoric to see the purposeful use of race to anchor political mobilization. President Woodrow Wilson used race to shape political attitudes and win the election of 1912. Historians note that President Wilson won the black vote by appealing to the desire amongst black voters to be free from Jim Crow segregationist policies. President Wilson declared to influential Bishop Alexander M. Walters that blacks “may count on me for absolute fair dealing...my sympathy of them is of long-standing<sup>119</sup>.” At the time, prominent black thinkers such as W.E.B. Du Bois and Monroe Trotter endorsed Wilson for President based on his persuasive rhetoric to be a president who knew no white or black<sup>120</sup>.

In 1915, Thomas Dixon Jr., an accomplished author, actor, Reconstruction historian and staunch proponent of the South and Democratic party (Southern Democrat pre-1940) presented his college friend President Woodrow Wilson with D.W. Griffith’s film “Birth of a Nation,” inspired by his best-selling book *The Clansman*. Dixon wrote to President Wilson that the films purpose "was to revolutionize Northern sentiments by a presentation of history that would transform every man in my audience into a good Democrat! . . . Every man who comes out of one of our theatres is a Southern partisan for life...This play is transforming the entire population of the North and West into sympathetic Southern voters. There will never be an issue of your segregation policy<sup>121</sup>." The film portrayed blacks as vicious, maligned barbarians attacking the

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<sup>118</sup> Wilson, Molly J. Walker. 2015. “The Rhetoric of Fear and Partisan Entrenchment.” *Law & Psychology*

<sup>119</sup> O'reilly, Kenneth. "The Jim Crow Policies of Woodrow Wilson." *The Journal of Blacks in Higher Education* 17 (1997): 117-121.

<sup>120</sup> O'reilly, Kenneth. "The Jim Crow Policies of Woodrow Wilson." *The Journal of Blacks in Higher Education* 17 (1997): 117-121.

<sup>121</sup> Franklin, John Hope. "" Birth of a Nation": Propaganda as History." *The Massachusetts Review* 20, no. 3 (1979): 417-434.

white people that were once their masters for vengeance as well as preying on innocent blonde white women. By the end of the film the white race rose to a new day, defeating the blacks and reclaiming peace and prosperity as a race-all claims that Dixon cited to be factual and representative of the south post-Reconstruction in the late 1800's.

Thomas Dixon Jr. became a notable, yet controversial figure in American society as his literary and cinematic works sought to empower white supremacy and the ideology of racial conservatism. In 1915 Sutton E. Griggs, an African American lawyer from Arkansas described that Dixon "said and did all things which he deemed necessary to leave behind him the greatest heritage of hate the world has ever known<sup>122</sup>." Nevertheless, despite the content and context of his work, President Wilson delighted in the request of his former college friend to see his film which helped to silence all opposition. By February of 1915, "Birth of a Nation" was shown as a private screening to the President, his family and members of his cabinet. The validation by the President that the film was an accurate and sad depiction of history gave way for the film's distribution across the country which cemented its portrayal as facts to many voters<sup>123</sup> Though the film was described as filthy, unjust and an insult to an entire race of people by Oswald Villard, a white founder of the NAACP, President Wilson praised the film and leveraged it as strategy to push his Jim Crow policies while in office<sup>124</sup>. The Wilson administration implemented segregationist policies that were widely supported such as requiring photographs

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<sup>122</sup> Franklin, John Hope. "" Birth of a Nation": Propaganda as History." *The Massachusetts Review* 20, no. 3 (1979): 417-434.

<sup>123</sup> Franklin, John Hope. "" Birth of a Nation": Propaganda as History." *The Massachusetts Review* 20, no. 3 (1979): 417-434.

<sup>124</sup> O'reilly, Kenneth. "The Jim Crow Policies of Woodrow Wilson." *The Journal of Blacks in Higher Education* 17 (1997): 117-121.

on all civil service applications as to ensure that blacks and whites were not assigned to work together to protect white women from black men<sup>125</sup>

The appeal to voters is crucial as they determine the will of the people by controlling who sits in government. This approach of appealing through fear shapes public policy, brings new political parties into power, create laws and overturns others<sup>126</sup>. Examples of this are seen through the election of President George H. W. Bush after the “Willie Horton” ad as well as President Bill Clinton’s three strikes crime policy. More recently this trend be seen through policies such as Executive Order 13769, popularly known as the President Trump “Muslim Ban” which barred travel to the United States from 7 majority Muslim (brown) countries to protect the nation from radical terrorist threats. Professors Lupia and Menning from the University of Michigan offer a mixed-methods study of asymmetrical impression management of political idea and voter reactions. The study shows statistically significant data and was completed through random sampling of voting age citizens across the country, making the findings applicable to be generalized to a larger audience. The study shows consistent correlations between one’s support for an idea when there is the presence of fear of a group of people or situations that threaten the livelihood of the average person. What is compelling in the study is the result that a citizen is moved to align with political ideas when there the politician impresses fear into the thought process of the citizen, regardless if the fear was proved to be true or not. With this, politicians (irrespective of party) leverage national events/issues to create social panic and the idea that there is an imminent or possible threat to the safety and security of the nation.

One of the most notable examples of the use of race and targeted fear rhetoric by a politician rose from the 1964 election between incumbent President Lyndon Johnson and Senator

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<sup>125</sup> O'reilly, Kenneth. "The Jim Crow Policies of Woodrow Wilson." *The Journal of Blacks in Higher Education* 17 (1997): 117-121.

<sup>126</sup> Robin, Corey. *Fear: The history of a political idea*. Oxford University Press, 2004.

Barry Goldwater. The ad by President Johnson commonly referred to as “Daisy” has been declared as the television ad that changed politics<sup>127</sup>. With an already strong campaign for re-election, President Johnson dealt the Goldwater campaign a final blow with “Daisy”. Leveraging fear rhetoric with a young white girl, daisies and a mushroom along with Sen. Goldwater’s own inflammatory language, President Johnson struck a fear chord with voters<sup>128</sup>. “Daisy” showed a young girl counting daisy petals from one to ten, followed by a voiceover counting from ten to one with the child’s face as a still photo followed by images of a nuclear explosion and the child’s face engulfed by mushroom clouds. The advertisement finished with a cry to vote for Johnson (implying that a vote for Goldwater would equal a nuclear war). President Johnson used the possible (or fictional) threat of a nuclear attack (from the Cuban missile crisis of 1961) and an innocent white girl to create social panic and the presence of a possible threat should he not be re-elected. With many cards already stacked against Goldwater, President Johnson was able to win re-election and experts note that the Daisy ad largely made the election a done deal<sup>129</sup>. Scholars note that a fearful face adds credibility to the notion that there is a sign of danger<sup>130</sup>. In the case of “Daisy” what many scholars fail to discuss is the casting of a white girl to play the role in the ad. During a time of heightened racial tensions in the United States with cases such as *Plessy v. Ferguson*, the Civil Rights Act and *Brown v. Board of Education* all centered around race, the use of a white girl in “Daisy” was strategic. The United States was in an era of tense racial divisions, with some politicians who opposed the expansion

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<sup>127</sup> Winkler, Allan M. "Daisy Petals and Mushroom Clouds: LBJ, Barry Goldwater, and the Ad That Changed American Politics." (2015): 262-264.

<sup>128</sup> Mann, Robert. *Daisy petals and mushroom clouds: LBJ, Barry Goldwater, and the ad that changed American politics*. LSU Press, 2011.

<sup>129</sup> Mann, Robert. *Daisy petals and mushroom clouds: LBJ, Barry Goldwater, and the ad that changed American politics*. LSU Press, 2011.

<sup>130</sup> Reed, Lawrence Ian, and Peter DeScioli. "Watch out! How a fearful face adds credibility to warnings of danger." *Evolution and Human Behavior* 38, no. 4 (2017): 490-49

of civil rights breaking away from the Democratic party in protest. In 1963 the United States was 88.6% white and in a tumultuous period for race relations<sup>131</sup> and with Darwinism as the basis of some political ideologies, the use of a white girl was profound because most voters at that time were more inclined to feel sorrow for a fearful white girl than a fearful black or brown girl. Various polls during the time pointed to racial intolerance in the United States. In 1962, Gallup reported that 42% of Americans thought that President John F. Kennedy was pushing racial integration too fast, while only 12% felt that it was not fast enough. By, 1963 Gallup found that 78% of white respondents would leave their neighborhood if an increasing number of black families were to move in. And by 1965 48% of Americans supported laws that banned black and white couples from marrying while only 42% disapproved of these laws<sup>132</sup>.

Leveraging national issues to create social panic can also be seen through the “war on crime”, “war on drugs” and “war on terrorism”. Some of these cases will be later discussed in the review, but their existence highlights the use of a national issue that was framed into a larger social calamity that created panic amongst voters all rooted in fear of a race rather than fear of an event. While these issues, along with a host of others have long been debated to define their cure, scholars note that some political figures have popularized terms to purposefully craft an image in voters’ minds; for example, President Nixon and the war on drugs-public enemy number one<sup>133</sup>

There are varying opinions about the effectiveness of fear language in politics amongst political scientists. Some scholars say that the use of fear mobilizes the electorate, while others

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<sup>131</sup> Census.gov; ropercenter.cornell.edu

<sup>132</sup> <https://news.gallup.com/vault/224678/best-gallup-vault.aspx>; <https://ropercenter.cornell.edu/featured-collections/gallup-data-collection>

<sup>133</sup> [https://web.stanford.edu/class/e297c/poverty\\_prejudice/paradox/htele.html](https://web.stanford.edu/class/e297c/poverty_prejudice/paradox/htele.html)



contrast that the use channeling of negative emotions disconnects voters from politics<sup>134</sup>. Rita Whillock offers a theory of hate speech and its effectiveness in mobilizing voters and notes that hate speech has become a communication phenomenon in politics post 1970-igniting racism, misogyny and homophobia to achieve political outcomes. When people are afraid, they are more likely to take action-whether that be to engage or disengage in the civic duties to society. For politicians who use fear messaging, this is often a win-win situation. If the base can be ignited to the polls it's great and in contrast, if there are less people participating in politics or elections in some cases this can increase the chance of winning for a party or candidate. Empirical evidence shows that voters are more likely to turnout at an election through anger more than any other emotion<sup>135</sup>. A study of the 2008 presidential election offers findings that 7/10 voters participated in the election driven by anger from the previous administration. Anxiety, which is closely connected to fear, was not suggested to be an enabling factor for voters to participate in politics. Understanding this, fear messaging has taken many forms in political rhetoric; some which may incite reactions more reminiscent of anger. Attack, hate and crime have all been used as channels to instill fear into the feelings of voters. Notable politicians in the United States such as President Bill Clinton have effectively used this rhetorical style of messaging to realign the electorate and reshape the good of the people.

*The use of race in politics is designed to shape democracy.* Throughout American history, fear rhetoric has marginalized communities at large, particularly communities of color. It has been well documented the impacts of fear rhetoric in politics to deter eligible African-

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<sup>134</sup> Whillock, Rita K. "The use of hate as a stratagem for achieving political and social goals." Hate speech (1995): 28-54; Ansolabehere, S., & Iyengar S. (1995). Going negative. How political advertisements shrink and polarize the electorate. New York: Free Press.

<sup>135</sup> Valentino, Nicholas A., Ted Brader, Eric W. Groenendyk, Krysha Gregorowicz, and Vincent L. Hutchings. "Election night's alright for fighting: The role of emotions in political participation." The Journal of Politics 73, no. 1 (2011): 156-170.

American voters in the deep south to register to vote pre-civil rights era, much of which caused an outcry from lawmakers in the northern states and subsequently the Voting Rights Act of 1965<sup>136</sup>. Southern politicians' rhetorical outrage to the idea of racial equality as an assault to white supremacy set the stage for the use of racial divisiveness in political language. The Civil Rights movement was classified by conservative politicians as radical propaganda. This attempt to frame racial equality as political, discredited acts such as President Johnson's Great Society initiatives that largely impacted communities of color<sup>137</sup>.

Senator Barry Goldwater's failed attempt for the Presidency may have put a pivot on outward racially charged language in politics. Sen. Goldwater took a controversial position opposing the Civil Rights Act of 1964 citing federalism. In his run for the presidency in 1964, Sen. Goldwater won the Republican nomination and was endorsed by the KKK (although he denounced the group and his association to racism). That position was perhaps not heard by all voters and Sen. Goldwater lost the election to incumbent President Lyndon B. Johnson. Scholars agree that Sen. Goldwater's position on civil rights along with the inflammatory language he used around racial conservatism catapulted the perception of the Republican Party as the party for white voters and Democratic Party as the party of racial liberalism<sup>138</sup>. Interestingly, in 2012, eighty-eight percent of voters that supported the Republican candidate were white, and at the state level, ninety-eight percent of Republican backing voters were white<sup>139</sup>. These

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<sup>136</sup> Lee, Taeku. *Mobilizing public opinion: Black insurgency and racial attitudes in the civil rights era*. University of Chicago Press, 2002.

<sup>137</sup> Beckett, Katherine, and Theodore Sasson. *The politics of injustice: Crime and punishment in America*. Sage Publications, 2003.

<sup>138</sup> Lee, Taeku. *Mobilizing public opinion: Black insurgency and racial attitudes in the civil rights era*. University of Chicago Press, 2002.

<sup>139</sup> López, Ian Haney. *Dog whistle politics: How coded racial appeals have reinvented racism and wrecked the middle class*. Oxford University Press, 2015.

demographics do not assert that white Republican voters are racist, but it does perhaps add context to the impact of racially divisive rhetoric in the 1960's.

Sen. Goldwater's approach of racial conservatism messaging perhaps introduced a new way to consider racial propaganda in politics by way of crime, drugs and terrorism. The failed election shed light that overtly racially divisive rhetoric was not a winning strategy for politicians, so taking a different approach to leverage racial divisions would be a more advantageous approach to successful perception management through rhetoric.

Extending beyond coded-language to mask the intentional use of race to shape political attitudes and outcomes, some politicians and government officials have leveraged "colorblindness" to construct a positive intent toward "racial equality" by intentionally not factoring race in policy; a position that in some ways is more racially divisive and detrimental to democracy than outward race appeal. According to Charles Gallagher, a professor at Georgia State University:

*"Colorblindness has emerged as America's newest racial mythology because it provides a level-playing-field narrative that allows whites to inhabit a social and psychological space that is free of racial tension. This new era of color-blindness is a respite from the racial identity movements that often result in white guilt, defensiveness or the avoidance of racially charged issues... Colorblindness allows whites to define themselves as politically progressive and racially tolerant as they proclaim their adherence to a belief system that does not see or judge individuals by the 'color of their skin (pg. 32)'<sup>140</sup>."*

furthermore, Gallagher discusses that prominent, successful racial minorities like [former] Secretary of State Colin Powell and [former] National Security Advisor Condoleezza Rice are proof to white America that the state's efforts to enforce and promote racial equality has been accomplished. Conservative pundits like anti-affirmative action advocate Ward Connerly, Justice Clarence Thomas and Secretary of Labor Elaine Chou add voice to affirm that the

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<sup>140</sup> Gallagher, Charles A. "Color-blind privilege: The social and political functions of erasing the color line in post-race America." *Race, Gender & Class* (2003): 22-37.

advocacy for programs that seek to construct race as a factor to consider when looking a social and economic policy is un-American. Gallagher notes that “Each [pundit] espouses a color-blind, race-neutral doctrine that treats race-based government programs as a violation of the sacrosanct belief that American society only recognizes the rights of individuals. These individuals also serve as important public examples that in a post-race, color-blind society, climbing the occupational ladder is now a matter of individual choice.” This ideology is seen through Federal cases such as *Shaw v. Reno 1993* and *Hays v. Louisiana III 1997* overturned the equal protections clause under the Fourteenth Amendment by denying restricting voting to reflect majority and minority racial demographics.

***Economics is used to create racial divisions in politics.*** Politicians leverage race to move economic policy, by focusing on appealing to the colorblindness approach that economic and social success is based on a meritocracy where all people, irrespective of race are given equal opportunity and access to achieve the same quality of life<sup>141</sup>. A 2003 qualitative study conducted across various U.S. college campuses as well as in rural counties of Georgia, about racial attitudes toward economic policy showed that an overwhelming majority of voting-aged white citizens believed that there were no fundamental differences in the opportunity to succeed. Emergent themes from the study showed that white voters believe that any socio-economic inequity in society was based solely on a person’s work ethic and not race, and that any program such as need-based financial aid or affirmative action were forms of reverse racism<sup>142</sup>and Typically, the nature of the use of race is implicit (visual), rather than explicit (verbal), which is

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<sup>141</sup> Gallagher, Charles A. "Color-blind privilege: The social and political functions of erasing the color line in post-race America." *Race, Gender & Class* (2003): 22-37.

<sup>142</sup> Gallagher, Charles A. "Color-blind privilege: The social and political functions of erasing the color line in post-race America." *Race, Gender & Class* (2003): 22-37.

intended to imply that the issues are not based on race, a direct target to mobilize white voters to support political strategy, particularly dealing with economics or government spending<sup>143</sup>.

In their analysis of U.S. economics, scholars Thomas and Mary Edsall (1991) note that President Ronald Regan's administration successfully linked special interests, economic nationalization, anti-liberty and minority groups during the 1980s. The success of this was seen through public opinion that Americans perceived minority groups including blacks, Hispanics and LGBTQ to be "united in making unreasonable demands for rights and resources they did not deserve<sup>144</sup>." The administration frequently associated the social and economic interests of these groups and being counter-interests to ordinary [white] Americans.

Immigration and employment are often central to politicians' economic messages to voters-often implicitly driven by race. In 1996 the California Democratic Party ran an ad for President Bill Clinton's re-election campaign that declared that Bill Clinton was working to stop illegal immigration, with scenes of brown people (likely Hispanic) coming across the U.S. southern border while the narrator on behalf of the party declared to viewers that the foreign workers were stealing jobs from American workers and that Clinton would protect the jobs and American values, followed by a scene of a white family<sup>145</sup> Countering the Clinton campaign, Senator Bob Dole, the GOP candidate for President communicated to voters that Clinton was responsible for wasteful government spending on midnight basketball (a social program in primarily black, urban communities) and alpine slides in Puerto Rico.

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<sup>143</sup> Mendelberg, Tali. 2001. *The Race Card: Campaign Strategy, Implicit Messages, and the Norm of Equality*. Princeton, NJ: Princeton University Press.

<sup>144</sup> Edsall, Thomas B., and Mary D. Edsall. 1991. *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics*. New York: Norton pg. 203.

<sup>145</sup> Valentino, N., V. Hutchings, and I. White. 2002. "Cues That Matter: How Political Ads Prime Racial Attitudes During Campaigns," *American Political Science Review*, 96(1): 75-90.

Professor Gallagher notes that “Within the context of a free market model, color-blindness has come to mean that ignoring or attending to one's racial identity race is a matter of individual choice much like the ways in which whites can choose to emphasize their ethnic background. Many whites, for example, claim to be Irish on St. Patty's Day. Some Italians-Americans feel purchasing a meal at the Olive Garden Restaurant is an ethnic dining experience that reconnects them to their immigrant past.<sup>146</sup>”

A 1990 empirical study shows that there is a correlation between those who support a free-market economy are also most likely to discriminate against ethnic minorities<sup>147</sup>. After gathering data from multiple samples across statistically significant data sets (See Sidanius & Pratto, 1993), these scholars conclude that the more one favors free-market capitalism, the more ethnocentric one tends to be<sup>148</sup>. Following this notion, scholars such as Daniel J. Levinson and Theodor Adorno developed a theory of capitalism known as *Politico-Economic Conservatism* that draws distinct connections to racism. The findings of these scholars led to a widely accepted theory of Social Dominance and Conservatism that assert that the more people believe that they are more susceptible to experiencing a threat or anxiety in the face of uncertainty, the more likely that are to support social, political and economically conservative policies<sup>149</sup>. Additionally, Levinson & Adorno note that according to Social Dominance Theory, most social attitudes that have anything to do with the distribution of social value in society (such as wage) will desire to have one's own social group be superior to other social groups.

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<sup>146</sup> Gallagher, Charles A. "Color-blind privilege: The social and political functions of erasing the color line in post-race America." *Race, Gender & Class* (2003): 22-37.

<sup>147</sup> Sidanius, Jim, and Felicia Pratto. "Racism and support of free-market capitalism: A cross-cultural analysis." *Political Psychology* (1993): 381-401.

<sup>148</sup> Adorno, Theodor W., Else Frenkel-Brunswik, Daniel J. Levinson, R. Nevitt Sanford, Betty Ruth Aron, Maria Hertz Levinson, and William R. Morrow. "The authoritarian personality." (1950): 709-26.

<sup>149</sup> Adorno, Theodor W., Else Frenkel-Brunswik, Daniel J. Levinson, R. Nevitt Sanford, Betty Ruth Aron, Maria Hertz Levinson, and William R. Morrow. "The authoritarian personality." (1950): 709-26.

These scholars go on to discuss that this theory of conservatism and social dominance are largely an attitudinal construct; making it advantageous for politicians to leverage race as a means to gather support for free-market policy-the basis of capitalism. This all translates back to US politicians free-market attitudes and the racial implications that are associated with policy.

For some, race is not only used to promote economic policy for a capitalist, but a socialist as well. Liberal politicians who oppose capitalism use race to highlight social inequities based on ethnicity to promote socialist economic policy. Political scholar Michael Goldfield notes in his study of race and economic policy that [race] has been the Achilles heel of the American left used to undermine solidarity, divide workers on economic policy during stable and unstable times and provide a viewpoint alternative to white males<sup>150</sup>. According to Goldfield, in each of the major turning points in American history (slavery, the Civil War, Reconstruction, Great Depression and New Deal), socio-economic class conflict led to progress and economic opportunities for both the black and white worker. However, in each case, the ruling class triumphed over the working class because of the elite's desire to maintain political and economic power. Furthermore, Goldfield declares that the Civil Rights Movement was a failure by politicians to address the disproportioned economic disadvantages of the Black community, but rather maintain power through programs and statutes that limit economic opportunities for minority communities to advance. For Goldfield political elites "mobilize the rhetoric of equality, democracy, and justice to enshrine governmental principle- and structures that perpetuated racial and class division...white politicians win elections by railing against affirmative action, welfare, and immigration. In each case, a supposedly democratic principle-

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<sup>150</sup> Goldfield, Michael. *The color of politics*. New York: New York Press, 1997 pg. 30

equality of opportunity, merit, national; cultural integrity-is mobilized in the cause of race (and class) oppression<sup>151</sup>.”

The strategic use of race in American politics is purposeful and influences political attitudes across multiple demographics of voters. While some politicians explicitly use racially charged rhetoric to move policy or election outcomes, most message implicit cues to align race and policy, by appealing to the “colorblind” lens of society-purposefully omitting racially indicative verbiage to imply the absence of race as a driver for their positions, targeting the white voter in shaping political attitudes. The next section of this chapter is the case study. This section seeks to connect the emergent themes from the literature review to three historic political/social movements involving U.S. politicians and their messaging to voters on key issues. The events that will be analyzed are the war on crime, war on drugs and war on terrorism-issues that span across recent decades in American politics.

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<sup>151</sup> Goldfield, Michael. *The color of politics*. New York: New York Press, 1997.



## CASE STUDY

Fear has been politicized to make people disgusted and either continue or change their political behavior around a variety of issues. With this, appealing to disgust not only ignites a base of voters, but it also stigmatizes and segregates communities who are positioned to be a violation of social mores through political rhetoric<sup>152</sup>. Even as crime rates decrease in communities, the discussion of crime within politics remains a focal point for politicians in search of office or law-making. Studies show that the discussion of crime within politics often turns into micro-aggressive dialogue surrounding race relations<sup>153</sup>. Crime, drugs and terror all disgust Americans at large. These three behaviors violate social mores and are an assault to liberty and moral code. Politicians have specialized in leveraging these issues to evoke fear within the electorate and divide voters largely on racial grounds. Even from the historic “Southern Strategy” the Republican Party admittedly has sought to alienate minority communities to secure the white vote<sup>154</sup>. The intent is not known if the divisive use of crime, drugs and terrorism seeks to align the white vote for Republicans, but its impacts are reminiscent of Sen. Goldwater and the widely known Republican Southern Strategy. Now while the United States has evolved to a country that refutes racism, politicians leverage racial attack messaging through coded language<sup>155</sup>.

***The War on Crime.*** Crime has become synonymous with racial slurs toward black and brown people in the U.S. After a convincing win against Sen. Goldwater, President Lyndon B.

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<sup>152</sup> Lupton, Deborah. "The pedagogy of disgust: the ethical, moral and political implications of using disgust in public health campaigns." *Critical Public Health* 25, no. 1 (2015): 4-14.

<sup>153</sup> Doering, Jan. 2017. “‘Afraid of Walking Home From the ‘L’ at Night?’ The Politics of Crime and Race in Racially Integrated Neighborhoods.” *Social Problems* 64 (2): 277–97. doi:10.1093/socpro/spw059.

<sup>154</sup> López, Ian Haney. *Dog whistle politics: How coded racial appeals have reinvented racism and wrecked the middle class*. Oxford University Press, 2015.

<sup>155</sup> López, Ian Haney. *Dog whistle politics: How coded racial appeals have reinvented racism and wrecked the middle class*. Oxford University Press, 2015.

Johnson brought crime to the political forefront after Sen. Goldwater accused his “war on poverty” as a cover-up for being soft on crime<sup>156</sup>. This set the stage for the war on crime to be embedded into the national fabric of issues and policy.

**Political use of race is purposeful.** President Johnson declared during his 1965 address the need for the government to address the problem of crime throughout the nation, and subsequently law enforcement policies began to craft at the federal level<sup>157</sup>. Though the “Great Society” is often discussed as the highlight of the Johnson administration, President Johnson was also the original contributor to the “war on crime” and provided a roadmap that succeeding Presidents would follow.

President George H.W. Bush leveraged this in his fear rhetoric used to win the White House. Willie Horton, an African American convicted felon serving a life sentence in Massachusetts was given a weekend furlough to leave prison during the weekend through state prison reform. During one of his weekends outside of prison, Willie broke into the home of a couple and raped the female. Of all the crimes in the U.S. then candidate Bush leveraged this case and with the help of media, gave it national attention. This led to a national outcry for reform and a platform for candidate Bush to message his position to have a “war on crime” and to “get tough” on criminals [which subsequently led to the repeal of the Massachusetts law allowing weekend furloughs for convicted felons]. President Bush’s war on crime was a war on race; as previously mentioned, fear messaging is purposeful. Coverage and discussions of criminals of color increased for political gain<sup>158</sup>. Willie Horton and criminals of color

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<sup>156</sup> Benekos, Peter J., and Alida V. Merlo. "Three strikes and you're out: The political sentencing game." *Fed. Probation* 59 (1995): 3.

<sup>157</sup> <http://www.lbjlibrary.org/lyndon-baines-johnson/speeches-films/president-johnsons-special-message-to-the-congress-the-american-promise>

<sup>158</sup> Anderson, David C., and Catherine Enberg. "Crime and the politics of hysteria: How the Willie Horton story changed American justice." *Journal of Contemporary Criminal Justice* 11, no. 4 (1995): 298-300.

throughout the 1980's and 1990's were depicted as savage; the victims were mostly white-middle class people, shown to have done nothing wrong. The rhetoric used to discuss the crimes conveyed that the crime could have been avoided if there were a change in policy<sup>159</sup>. Now, post Willie Horton studies show that white voters are more likely to support punitive criminal punishment if words like "inner city" are used in association with the suspected criminal<sup>160</sup>

***The War on Drugs.*** Like crime, drugs have been used to marginalize communities of color. The "war on drugs" has been one of the United States longest wars in history. This war was declared by President Nixon during a 1971 press conference and is still on the battle ground forty-seven years later.

**The political use of race is designed to shape democracy.** Prior to 1971, Americans did not see drugs as a major issue in the country. Only three percent of voters polled by the White House in 1969 saw drugs as an important problem. However, after 1971, drugs became an important issue on the Gallup polls "national hopes and fears" data<sup>161</sup>.

The political use of drug issues seems to carry racially charged intentions like crime and its effects have been devastating. As the United States continues to grow with racial diversity, drug policies have become harsher regardless of which political party occupies the White House<sup>162</sup>. Since the Nixon administration, politicians have made racial minority groups, particularly African American and Latinos, the enemy in the war on drugs<sup>163</sup>. In 1971 President Richard Nixon declared that drugs and drug abuse was public enemy number one. By declaring

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<sup>159</sup> Anderson, David C., and Catherine Enberg. "Crime and the politics of hysteria: How the Willie Horton story changed American justice." *Journal of Contemporary Criminal Justice* 11, no. 4 (1995): 298-300.

<sup>160</sup> Hurwitz, Jon, and Mark Peffley. "Playing the race card in the post-Willie Horton era: The impact of racialized code words on support for punitive crime policy." *Public Opinion Quarterly* 69, no. 1 (2005): 99-112.

<sup>161</sup> Provine, Doris Marie. *Unequal under law: Race in the war on drugs*. University of Chicago Press, 2008.

<sup>162</sup> Provine, Doris Marie. *Unequal under law: Race in the war on drugs*. University of Chicago Press, 2008.

<sup>163</sup> Nunn, Kenneth B. "Race, Crime and the Pool of Surplus Criminality: Or Why the "War on Drugs" Was a "War on Blacks"." (2002); Beckett, Katherine, and Theodore Sasson. *The politics of injustice: Crime and punishment in America*. Sage Publications, 2003; Hawdon, James E. "The role of presidential rhetoric in the creation of a moral panic: Reagan, Bush, and the war on drugs." *Deviant Behavior* 22, no. 5 (2001): 419-445.

this to the American people, and strategically associating African Americans with drugs through fear rhetoric, the Nixon administration successfully further marginalized a historically suppressed community into further social marginalization and aligned policy to combat the “war on drugs.” According to former Nixon aide John Ehrlichman:

*"The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people... You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin. And then criminalizing both heavily, we could disrupt those communities," Ehrlichman said. "We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course, we did"<sup>164</sup>.*"

President Reagan continued fighting the war on drugs with the discovery of crack cocaine in largely black and brown communities. In 1982 President Reagan messaged that drugs were a threat to national security in order to garner public support by framing drug intervention as a protection of American civil liberty<sup>165</sup>. Scholars note that Reagan leveraged drugs to create social panic because anticommunism was no longer a successful fear tactic for politicians with the growing number of intellectuals and liberal voters who did not see the threat of communism and anarchy as a social reality<sup>166</sup>. By 1986, both chambers of Congress passed sweeping legislation (supported largely by both parties) to harshen punishments for the sale and possession of crack cocaine, and state legislatures followed suit<sup>167</sup>. Subsequently now in the United States, more African American men go to jail for drug related crimes than go to college and predominantly African American communities experience a substantial amount of police activity

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<sup>164</sup> <https://www.cnn.com/2016/03/23/politics/john-ehrllichman-richard-nixon-drug-war-blacks-hippie/index.html>

<sup>165</sup> Morales, Waltraud Queiser. "The war on drugs: a new US national security doctrine?" Third World Quarterly 11, no. 3 (1989): 147-169.

<sup>166</sup> Morales, Waltraud Queiser. "The war on drugs: a new US national security doctrine?" Third World Quarterly 11, no. 3 (1989): 147-169.

<sup>167</sup> Provine, Doris Marie. Unequal under law: Race in the war on drugs. University of Chicago Press, 2008.

focused on drug infractions as compared to predominantly white neighborhoods<sup>168</sup>. The mission to eliminate public enemy number one has robbed African American and black people of the very liberty that the war on crime sought to protect such as the right to vote<sup>169</sup>.

As fear rhetoric spans across the political aisle, it is no surprise that in the footsteps of outgoing Republican President George H.W. Bush, Democratic President Bill Clinton continued fighting the war on drugs through his policies and political language. According to scholars, “crime used to be the Republican’s issue, just as the economy was the Democrat’s. But no more!<sup>170</sup>”. As seen through the success of speaking to the public’s fear of crime and drug use hampering society, politicians of the 80’s and 90’s increasingly spoke about crime and punishment because simply, it works<sup>171</sup>.

While President Nixon may have lit the torch for the “Prosecutor in Chief” era, President Clinton raised the torch enacting one of the most devastating pieces of legislation that disproportionally affected communities of color. Coming into office, President Clinton ran as a moderate Democrat who vowed throughout the course of his campaign to be tough on crime and tough on drugs. According to Marc Mauer from the Marshall Project “While running for President in 1992, Clinton left the campaign trail just before the New Hampshire primary to personally oversee Arkansas’s execution of Ricky Ray Rector, a mentally impaired black man. Afterwards, he remarked ‘I can be nicked on a lot, but no one can say I’m soft on crime’<sup>172</sup>.” Some scholars note that many politicians of the time were surprised by the position Clinton took

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<sup>168</sup> Nunn, Kenneth B. "Race, Crime and the Pool of Surplus Criminality: Or Why the " War on Drugs" Was a " War on Blacks". (2002)

<sup>169</sup> Provine, Doris Marie. *Unequal under law: Race in the war on drugs*. University of Chicago Press, 2008.

<sup>170</sup> Schneider, Anne, and Helen Ingram. "Social construction of target populations: Implications for politics and policy." *American political science review* 87, no. 2 (1993) pg. 24.

<sup>171</sup> Schneider, Anne, and Helen Ingram. "Social construction of target populations: Implications for politics and policy." *American political science review* 87, no. 2 (1993): 334-347.

<sup>172</sup> <https://www.themarshallproject.org/2016/04/11/bill-clinton-black-lives-and-the-myths-of-the-1994-crime-bill>

on drugs to punish rather than treat, but after a decade of Republican leadership in the White House, continuing the war on drugs and crime was a safe ticket to occupy the oval office<sup>173</sup>. In 1994 President Clinton signed the Violent Crime Control and Law Enforcement Act that included a \$9 billion budget for prison construction and \$8 billion budget for 100,000 police officers to be added to the streets. Additionally, the bill provided mandatory minimum sentencing for offenders, increased provisions for the death penalty and financial incentives to encourage states to limit parole and provide harsher punishments for criminal offenses<sup>174</sup>.

Scholars note that President Clinton wanted any form of legislation with the word crime on it, taking note about the benefits of this sensationalized issue that brought about public support since the 1960's<sup>175</sup>. Clinton took his position of "get tough" politics to the next level with his State of the Union address and the slogan "three strikes and you're out" which some say was a play on words citing the Major League Baseball strike of 1994<sup>176</sup>. Clinton noted in his address that "Every day the national peace is shattered by crime. Violent crime and the fear it provokes are crippling our society, limiting personal freedom and fraying the ties that bind us...three strikes, and you are out!"<sup>177</sup> As a part of the 1994 crime bill passed by Congress, if a felon reached three convictions, he/she would serve a life sentence. This bill, along with the general get-tough crime policies of the time were largely supported, while their effected crippled and destroyed marginalized communities<sup>178</sup>. Even when discussing funding for recreational

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<sup>173</sup> Bobo, Lawrence D., and Victor Thompson. "Unfair by design: The war on drugs, race, and the legitimacy of the criminal justice system." *Social Research: An International Quarterly* 73, no. 2 (2006): 445-472.

<sup>174</sup> Shichor, David. "Three strikes as a public policy: The convergence of the new penology and the McDonaldization of punishment." *Crime & Delinquency* 43, no. 4 (1997): 470-492.

<sup>175</sup> Benekos, Peter J., and Alida V. Merlo. "Three strikes and you're out: The political sentencing game." *Fed. Probation* 59 (1995): 3.

<sup>176</sup> Jones, Trevor, and Tim Newburn. "Three Strikes and You're Out: Exploring Symbol and Substance in American and British Crime Control Politics 1." *British Journal of Criminology* 46, no. 5 (2006): 781-802.; Benekos, Peter J., and Alida V. Merlo. "Three strikes and you're out: The political sentencing game." *Fed. Probation* 59 (1995): 3.

<sup>177</sup> <https://www.nytimes.com/1994/01/26/us/state-of-the-union-the-overview-clinton-vows-fight-for-his-health-plan.html>

<sup>178</sup> Provine, Doris Marie. *Unequal under law: Race in the war on drugs*. University of Chicago Press, 2008.

programming for inner-city youth as a strategy to provide alternatives to crime involvement, some members of Congress argued against the community measure calling it “hugs for thugs<sup>179</sup>”.

***The War on Terror.*** Shortly after the Clinton era, came the deadliest attack on United States soil-9/11. While the acts of violence were treacherous and an abomination to civil liberty, some scholars discuss that the horrific events were used by politicians to advance the political agenda and marginalize communities of color by speaking to the war on terrorism<sup>180</sup>. In the post-911 era, racial profiling and discrimination against Arab-Americans and those of Middle Eastern descent has been justified in the name of national security. Terrorism has become parallel to racism based on the fear charged rhetoric used by politicians and the media to portray radical Islamic terror groups as a race/ethnicity at large. Scholars note that with the war on terror came an increase in the amount of English-only legislation across many levels of government. Rather than promoting cross-cultural sensitivity, politicians desired to ban foreign languages in public arenas, citing a fear of conspiracies crafted by terrorists in a tongue that most Americans cannot understand<sup>181</sup>.

**Economics is used to create racial divisions in politics.** Some experts further examine that the Bush administration used fear and the possible threat of another terror attack to advance social and economic policies at the federal level. After the attacks of 9/11, Americans rallied behind the flag and government and supported the President’s agenda as a sign of patriotism<sup>182</sup>. With this also came an unprecedented rise in hate crimes against Arab and Southeast Asian Americans across the country. Scholars note that these acts were largely a

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<sup>179</sup> Hurwitz, Jon, and Mark Peffley. "Playing the race card in the post-Willie Horton era: The impact of racialized code words on support for punitive crime policy." *Public Opinion Quarterly* 69, no. 1 (2005): 99-112

<sup>180</sup> Birkenstein, Jeff, Anna Froula, and Karen Randell, eds. *Reframing 9/11: film, popular culture and the war on terror*. Bloomsbury Publishing USA, 2010 pg. 89.

<sup>181</sup> Birkenstein, Jeff, Anna Froula, and Karen Randell, eds. *Reframing 9/11: film, popular culture and the war on terror*. Bloomsbury Publishing USA, 2010.

<sup>182</sup> Warde, Ibrahim. *The price of fear: The truth behind the financial war on terror*. Univ of California Press, 2007.

reflection of fear and hate rhetoric used by politicians such as Rep. John Cooksey<sup>183</sup>.

Congressman Cooksey stated when speaking post 9/11 “if I see a guy come in that’s got a diaper on his head and a fan belt wrapped around the diaper on his head, that guy needs to be pulled over and checked<sup>184</sup>. Leveraging this fear of brown terrorists, former National Security Secretary Kirstjen Nielsen stated to Congress in 2019 that the Department had discovered more than 3,000 known terrorists attempt to enter the United States through the southern border<sup>185</sup>. This testimony, later discovered to be misleading and baseless, was used as an effort to create fear of immigrants and move public support to secure government funding for a wall at the southern border.

The political use of race through coded language has paralyzing effects on society and had adverse effects largely on some of the most vulnerable communities in the country. Crime, drugs and terrorism have all been used to convey the presence of danger to evoke fear from voters in political discourse. The federal government has little control over issues like drugs and crime, as they are most impactful at the state level. Scholars note that rhetoric used to address these issues are mostly symbolic, and fear language is designed to manipulate voters into feeling a sense of relief that something is being done about a problem...despite how big or small the problem may be in reality<sup>186</sup>. This impression management is a threat to democracy as voters’ political attitudes are shaped by politicians to imply that a group of people pose a threat to ordinary American’s quality of life. Every U.S. President since John F. Kennedy has leveraged crime, drugs or terrorism as coded language to marginalize communities and reshape the electorate. Sixty years since the days of President Johnson, the Trump administration has

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<sup>183</sup> Warde, Ibrahim. *The price of fear: The truth behind the financial war on terror*. Univ of California Press, 2007.

<sup>184</sup> <https://www.nytimes.com/2001/09/21/us/national-briefing-south-louisiana-apology-from-congressman.html>

<sup>185</sup> [https://www.washingtonpost.com/politics/2019/01/14/guide-understanding-administrations-spin-terrorists-border/?noredirect=on&utm\\_term=.401d0a40b555](https://www.washingtonpost.com/politics/2019/01/14/guide-understanding-administrations-spin-terrorists-border/?noredirect=on&utm_term=.401d0a40b555)

<sup>186</sup> Marion, Nancy E. "Symbolic policies in Clinton's crime control agenda." *Buff. Crim. L. Rev.* 1 (1997): 67.



seemingly spun all three issues to shape policy and opinions. The words crime, drugs and terrorism do not only place fear in the hearts of the suburban victims, but also in the communities who are the faces of these issues.

## CHAPTER THREE: THE INFLUENCE OF POLITICAL ATTITUDES WITHIN THE COURTS

Judicial officers are political actors. The United States separation of powers within the federal government is widely accepted and known to be three co-equal branches of government that work unilaterally to check and balance the power of lawmaking and governance. While there are differing views of the separation of powers (adversarial legalism), what is consistent through each branch is political ideology in the creation and subsequent interpretation of statutes. The federal judiciary is hardly an independent branch of government, as members of this body are appointed by the Executive and confirmed by the Senate. Unlike the President and Congress, Federal Judges and Justices do not serve by way of public vote-making their roles fundamentally dependent on aligned political ideology to the Executive rather than simply “interpreting the law.” This chapter seeks to understand how political attitudes influence judicial outcomes within the Supreme Court of the United States.

Partisanship greatly impacts statutory language and the interpretation of legislative intent by judicial and executive authorities in the United States. The rule of law is impartial and sometimes ambiguous; the interpretation of law is not. As Congress moves legislation throughout its committees and chambers, lawmakers create and amend definitions within a statute to advise citizens and authorities on areas of clarification to ensure the statute is interpreted as broadly or specifically as they intend.

As legislators create statutes, lawmakers delegate authority for policy interpretation and implementation to the executive and judicial branches to ensure that statutes are adhered to for the greater good of the republic. According to Mikva & Lane (1997) “historically, reference by the courts to legislative intent was the subject of intense critical analysis. Such criticism argued that judges frequently used legislative intent to trump statutory language that the judge’s

disfavor.<sup>187</sup>” With this, statutes are inherently political, and their definitions are as much partisan as they are finite. Throughout this chapter the researcher seeks to understand what role political attitudes play in the interpretation of legislative language in the United States, ultimately creating policy by way of partisan interpretation. The researcher argues that the interpretation of terms and legislative intent in the dissection of a statute is based on the judicial and/or executive authorities’ political identification, making the interpretation of a statute partisan in court cases where the legislative language is ambiguous, unfair. For the purposes of clarity and a succinct synthesis of findings, the writer focuses on the federal judiciary.

This chapter is divided into four parts: introduction, literature review analyzing competing view of the Supreme Court legitimacy from competing schools of thought, case study analysis of judicial behavior in the 2015 Obergefell v Hodges interpretation of the 14<sup>th</sup> amendment, and summary/conclusion of findings from the literature review against the court outcomes in the case study.

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<sup>187</sup> Mikva, Abner J., and Eric Lane. *An introduction to statutory interpretation and the legislative process*. Aspen Law & Business, 1997.

## LITERATURE REVIEW

The federal courts are political institutions as they are led by voting citizens all with formed political attitudes. Former Chief Justice Charles Evans Hughes once declared that “we are under the Constitution, but the Constitution is what the judges say it is.”<sup>188</sup> To understand how the courts operate in times of unclear legislative language is to understand the political affiliation of those judicial officers and how this impacts their viewpoint of the Constitution. The Scholars note that the growing political attitudes and partisan behavior of federal judges, specifically justices of the Supreme Court have made judicial behavior unstable, unaccountable and far more powerful than the framers intended the branch to be<sup>189</sup>. According to legal scholars, there are four views of how to interpret the Constitution and subsequent statutory law:

**Originalist:** all statements in the Constitution must be interpreted based on the original understanding of the authors or the people at the time it was ratified.

**1.Textualist:** An originalist who gives primary weight to the text and structure of the Constitution. Textualists often are skeptical of the ability of judges to determine collective "intent."

**2.Intentionalist:** An originalist who gives primary weight to the intentions of framers, members of proposing bodies, and ratifiers.

**Non-Originalist:** believe framers at the Convention in Philadelphia indicated that they did not want their specific intentions to control interpretation. Additionally, no written Constitution can anticipate all the means that government might in the future use to oppress people, so it is sometimes necessary for judges to fill in the gaps.

**3. Pragmatist:** A non-originalist who gives substantial weight to judicial precedent or the consequences of alternative interpretations, so as to sometimes favor a decision "wrong" on originalist terms because it promotes stability or in some other way promotes the public good.

**4. Natural Law Theorist:** A person who believes that higher moral law ought to trump inconsistent positive law<sup>190</sup>.

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<sup>188</sup> Meese III, Edwin. "Law of the Constitution." Tul. L. Rev. 61 (1986): 979.

<sup>189</sup> Burns, James MacGregor. *Packing the Court: The Rise of Judicial Power and the Coming Crisis of the Supreme Court*. New York: The Penguin Press, 2009.

<sup>190</sup> Manning, John F. "Deriving Rules of Statutory Interpretation from the Constitution." Colum. L. Rev. 101 (2001): 1648. Fallon Jr, Richard H. "A constructivist coherence theory of constitutional interpretation." *Harvard Law Review* (1987): 1189-1286; Berger, Raoul. "Originalist Theories of Constitutional Interpretation." *Cornell L. Rev.* 73 (1987): 350. Smith, Peter J. "How different are originalism and non-originalism." *Hastings LJ* 62 (2010): 707; <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/interp.html>

*Statutory interpretation is inherently political.* According to some scholars, the Supreme Court is viewed by the public as an apolitical institution because most conventional scholarly wisdom suggests that voters are unaware of the policymaking process and therefore believe the courts are relatively more objective and above politics<sup>191</sup>. By contrast, a thorough analysis of the court's behavior by some legal and political scholars suggests that this public perception is an inaccurate depiction of judicial behavior in relation to a justice's political attitude. According to Professor Brandon Bartels "Conventional wisdom says that individuals' ideological preferences do not influence Supreme Court legitimacy orientations<sup>192</sup>." Political scientist Thomas Keck builds on this argument in his analysis of judicial behavior, particularly in modern polarized political times. Keck analyses the apolitical opinions of Justices Marshall, Kennedy, and Roberts as being neutral and non-partisan as these justices regularly issued opinion counter to that of their personal political affiliations. Republican Chief Supreme Court Justice John Roberts understanding of the perception of partisan judicial behavior seemed to have led him to align with the liberal wing of the court when deciding the constitutionality of the Affordable Care Act in 2010. Justice Roberts upheld the Democratic law in a majority opinion along with the four liberal justices, acting in what he calls a judicial umpire<sup>193</sup>. According to Justice Roberts, "Judges are like umpires. Umpires don't make the rules, they apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules, but it is a limited role." Justice Roberts attributes the work of an unbiased court to ruling based on the rule of law and the record. If this is the case, it is difficult to understand how Justice Roberts upheld the constitutionality of the ACA, while at the same time striking down two of the most hotly

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<sup>191</sup> Bartels, Brandon L., Christopher D. Johnston, and Alyx Mark. 2015. "Lawyers' Perceptions of the U.S. Supreme Court: Is the Court a 'Political' Institution?" *Law & Society Review* 49 (3): 761–94. doi:10.1111/lasr.12154

<sup>192</sup> Bartels, Brandon L., and Christopher D. Johnston. "On the ideological foundations of Supreme Court legitimacy in the American public." *American Journal of Political Science* 57, no. 1 (2013): 184-199.

<sup>193</sup> Keck, Thomas M. *Judicial politics in polarized times*. University of Chicago Press, 2014.

contested Republican issues with the statute as argued in the lower courts; the individual mandate provision exceeded the scope of congressional authority under the commerce clause and second that a provision compelling state governments to dramatically expand their Medicaid rolls amounted to an unconstitutionally coercive use of the federal government's spending powers<sup>194</sup>. While Justices Marshall, Kennedy and Roberts have dissented against conservative causes, their "neutral" opinions are largely the exception, not the rule.

There is a body of work that argues that originalism inherently makes the Supreme Court a legitimate institution, scholarly research suggests otherwise. Elements of the Constitution are ambiguous, as are statutes that Congress passes. The faithful-agent theory outlines the principle of all judicial interpretation being that the lawmaker (Constitution or Congress) is the principal command and the judicial officer is an interpreting agent of the law. This theory in plain sight would indicate an originalist framework, except when the law is unclear. The faithful agent judicial officer must then consider to the best of her knowledge what the lawmaker intended the law to mean<sup>195</sup>. Cases that involving the 14<sup>th</sup> Amendment, understanding what liberty or family mean provide cornerstone examples that refute the idea that originalists are not politically biased as these cases ask judicial officers to create their own definitions of what the Constitution meant. The case study will provide further examination of this practice.

Coupling the view of how judicial authorities interpret the Constitution with the principles of conservatism and liberalism help to highlight the connection between legislative interpretation and political attitudes. According to the Republican Liberty Caucus, "We [Republicans] support the Constitution as the supreme law of the land, the republican form of government it requires, and the right of all citizens to fair and equitable representation... and

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<sup>194</sup> Keck, Thomas M. *Judicial politics in polarized times*. University of Chicago Press, 2014.

<sup>195</sup> Manning, John F. "Deriving Rules of Statutory Interpretation from the Constitution." *Colum. L. Rev.* 101 (2001): 1648.

recognize that the sole function of the courts is to interpret the Constitution. We oppose judicial amendments or the crafting of new law by any court... We oppose any allocation of government funds or resources to facilitate abortions<sup>196</sup>. In short, conservatives believe in the rule of law, predictability and stability of law, judicial restraint, and the belief that social policy decisions should be left to Congress rather than the courts<sup>197</sup>.

For Democrats, the DNC facilitates the party platform every four years to ensure the party principles reflect the needs of the current society<sup>198</sup>. The Democratic Party is the organization of an ideology that speaks to the collective good rather than individual liberty and believes the government should take an active role in people's lives; particularly those who are in need<sup>199</sup>. For liberals, the court decisions should reflect the American experience of the current day and the law should be reinterpreted for each case, rather than based on precedent<sup>200</sup>.

There are clear parallels between statutory interpretation and political attitudes. Originalist judges are often associated with being conservative while non-originalists are associated with being liberal<sup>201</sup>. For a conservative/originalist, the Constitution is the supreme rule of law and does not change based on changing society. These judicial authorities advocate against the idea of a "Living Constitution" where judges base decisions for the good of the people rather than to the letter of the law-legislative interpretation should render the same outcomes as intent should only be considered from the perspective of the authors of the Constitution. The originalist approach to legislative interpretation was embraced by the Reagan

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<sup>196</sup> <https://rlc.org/statement-of-principles-positions/>

<sup>197</sup> Merrill, Thomas W. "The Conservative Case for Precedent." *Harv. JL & Pub. Pol'y* 31 (2008): 977.

<sup>198</sup> [https://democrats.org/wp-content/uploads/2018/10/2016\\_DNC\\_Platform.pdf](https://democrats.org/wp-content/uploads/2018/10/2016_DNC_Platform.pdf)

<sup>199</sup> [http://www.scholastic.com/browse/article.jsp?id=4706&utm\\_source=www.uoota.com](http://www.scholastic.com/browse/article.jsp?id=4706&utm_source=www.uoota.com)

<sup>200</sup> Purcell, Edward A. *Brandeis and the Progressive Constitution: Erie, the Judicial Power, and the Politics of the Federal Courts in Twentieth Century America*. Yale University Press, 2000.

<sup>201</sup> Post, Robert, and Reva Siegel. "Originalism as a Political Practice: The Right's Living Constitution." *Fordham L. Rev.* 75 (2006): 545.

administration who sought to restore originalism to the courts after an era of the progressive Warren Court that they felt, usurped legislative authority through statutory interpretation<sup>202</sup>. According to former Justice Antonin Scalia, the Living Constitution essentially means that the Constitution is a dead document<sup>203</sup>.

For the liberal/non-originalist, the courts should progress the interpretation of law as societal norms and mores progress-much like the changing platform of the Democratic Party. Connecting the “Living Constitution” approach to this, the judiciary in some cases becomes a law-making body more so than law-interpreting body of government when legislative language is not clear (much like the Democratic principle of bigger government)<sup>204</sup>. Judicial officers essentially create laws by interpreting the legislative language under considerations of social mores, history and outcomes that are for the good of the Republic.

Further expressing the non-originalist perspective on legislative language, sitting Justice Stephen Breyer, a Democrat, offers a perspective which he identifies as “active liberty.” This approach outlines a progressive alternative to conservative originalism and textualism that moves beyond the “Living Constitution” approach of the Warren Court. The Living Constitution approach operated under a premise where justices interpret the Constitution broadly to align with modern needs and values and discerned by the judge him/herself<sup>205</sup>. For Justice Breyer, considering the moral compass of the day and the consequences of society for alternative decisions, along with interpreting legislative intent and judicial history allows the courts to exhibit democratic self-government which the Constitution explicitly protects.

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<sup>202</sup> Post, R.; Siegel, R. (2006). Originalism as political practice: The right's living constitution. *Fordham Law Review*, 75(2), 545-574.

<sup>203</sup> Strauss, David A. *The living constitution*. Oxford University Press, 2010.

<sup>204</sup> Strauss, David A. *The living constitution*. Oxford University Press, 2010.

<sup>205</sup> McConnell, Michael W. "Active Liberty: A Progressive Alternative to Textualism and Originalism." (2005): 2387.



By contrast, former Chief Justice William Rehnquist demonstrated a principal example of the connection of conservative political ideology and judicial originalism. The “Rehnquist Court” held a reliable bloc of conservative justices that often-upheld Rehnquist’s view of conservative/Republican policy<sup>206</sup>. As Chief Justice, Rehnquist led the Supreme Court to limit abortion rights, affirmative action, and reinvigorate states’ rights through cases like *United States v. Lopez*<sup>207</sup>. Chief Justice Rehnquist, a Republican appointed by a Republican President, held firm to the ideals of federalism and limited government, subsequently narrowing the amount of written opinions from the court from 164 his first term as Associate Justice to 79 by his last year in the Court<sup>208</sup>.

Examples of this divide on political ideology can be traced throughout the iterations of the courts throughout history. Scholars note that notable originalist justices who have served on the Supreme Court have all expressed a conservative political attitude including Justices Black, Scalia, Thomas and Bork. By contrast, non-originalist judges have included Justices Blackmun, Brennan, Douglas and Posner who expressed a liberal attitude in their outlook on statutory interpretation<sup>209</sup>. These justices provide a short-list of examples, as nearly all justice court opinions can be connected to their political ideology which will be later discussed. A 2005 Annenberg study of perceptions of the Supreme Court amongst legal scholars suggests that bar certified attorneys agree that the Supreme Court is often influenced by political attitudes. Though the survey findings do not suggest that these findings delegitimize the Supreme Court in

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<sup>206</sup> "The Rehnquist Court and “Conservative Judicial Activism”." In *That Eminent Tribunal: Judicial Supremacy and the Constitution*, edited by Wolfe Christopher, 199-224. Princeton University Press, 2004.  
<http://www.jstor.org/stable/j.ctt7ssxp.15>.

<sup>207</sup> "The Rehnquist Court and “Conservative Judicial Activism”." In *That Eminent Tribunal: Judicial Supremacy and the Constitution*, edited by Wolfe Christopher, 199-224. Princeton University Press, 2004.  
<http://www.jstor.org/stable/j.ctt7ssxp.15>.

<sup>208</sup> Erwin Chemerinsky, "Assessing Chief Justice William Rehnquist," *University of Pennsylvania Law Review* 154, no. 6 (June 2006): 1331-1364

<sup>209</sup> <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/interp.html>

the eyes of legal scholars, a theory scholars note as the “motivated reasoning” model suggests that legal scholars surveyed showed patterns of believing in the legitimacy of the court despite their perceptions that some judicial outcomes are motivated by political ideology<sup>210</sup>

***Federal Judges assume the bench by way of party affiliation.*** It is often understated that historically, members of the federal judiciary have political careers prior to joining the court. Many Supreme Court Justices have held state and/or federal level Congressional seats as well as Governorships across the U.S. Fourteen Justices have served as United States Senators and seventeen have served as Representatives<sup>211</sup>. Former Chief Justice Earl Warren was the Governor of California and former Vice-President candidate for the Republican nomination in 1948 (Warren later switched to the Democratic party in 1962). Justice Sandra Day O’Connor served as the Republican Majority Leader of the Arizona State Senate prior to joining the court

With this, the appointment to the federal bench has a direct connection to party affiliation. In the United States, federal judges assume their role through appointment, which for an Executive involves the process of consideration of the judge’s political attitude and its connection to statutory interpretation<sup>212</sup>. In an analysis of President Truman, scholars note that the selection of Supreme Court justices was driven by the desire of the President to select candidates who were from his tight knit political circle<sup>213</sup>. For the purposes of this examination, the researcher focuses on the United States Supreme Court and the political influence that is the basis of statutory interpretation. A strong predictor of how a federal judge will interpret legislative language is based on the political party of the President who nominated the judge as

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<sup>210</sup> Bartels, Brandon L., Christopher D. Johnston, and Alyx Mark. “Lawyers’ Perceptions of the U.S. Supreme Court: Is the Court a ‘Political’ Institution?” *Law & Society Review* 49, no. 3 (September 2015): 761–94. doi:10.1111/lasr.12154.

<sup>211</sup> <https://www.npr.org/2018/07/29/633544343/a-political-career-used-to-precede-a-supreme-court-appointment-not-anymore>

<sup>212</sup> Yalof, David Alistair. *Pursuit of justices: Presidential politics and the selection of Supreme Court nominees*. University of Chicago Press, 2001.

<sup>213</sup> Yalof, David Alistair. *Pursuit of justices: Presidential politics and the selection of Supreme Court nominees*. University of Chicago Press, 2001.

there is a likelihood that the judge and President share the same ideological beliefs along the liberal-conservative continuum<sup>214</sup>. When a President nominates a judge to the federal bench, there is an expectation that the judge will share the President's view on issues such as affirmative action, abortion, and executive authority<sup>215</sup>. History does note exceptions to this, such as Justice Anthony Kennedy (a member of the Republican Party, appointed by President Ronald Reagan) who was expected to rule with a conservative political attitude yet ended up being a moderate justice in his interpretations.

Chief Justice Earl Warren, a Republican who ruled to expand civil rights in cases such as *Brown v. Board of Education*-much to the demise of appointing President Eisenhower. In 1997, the New York Times obtained an excerpt from a diary of Justice Harold Burton surrounding Justice Warren. The New York Times reported:

*"Burton recounts a meeting with Eisenhower in 1957, when he told the President he was leaving the Supreme Court. He confirms that Eisenhower expressed his regrets in appointing Warren and Justice Brennan and described both appointments as big mistakes. The President described the favorable recommendation he had received on Justice Brennan as "off-base." Eisenhower finished his observations to Burton by saying that in finding a replacement, he would pay more attention to ideology than he had in the Warren and Brennan appointments, which were both made for political reasons."*<sup>216</sup>

Political scientists note the patterns of the federal judicial selection process and its relation to the separation of powers and politics. "Under President Bill Clinton, for example, the Republican controlled Senate Committee on the Judiciary refused to schedule hearings on several nominees, effectively preventing their confirmation. To some Republicans, President Clinton's nominees were simply "too liberal." Under President George W. Bush, a Democratic

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<sup>214</sup> Sunstein, Cass R., David Schkade, Lisa M. Ellman, and Andres Sawicki. *Are judges political? an empirical analysis of the federal judiciary*. Brookings Institution Press, 2007.

<sup>215</sup> Sunstein, Cass R., David Schkade, Lisa M. Ellman, and Andres Sawicki. *Are judges political? an empirical analysis of the federal judiciary*. Brookings Institution Press, 2007.

<sup>216</sup> <https://www.nytimes.com/1997/07/28/opinion/1-eisenhower-s-mistakes-336475.html>

minority in the Senate succeeded in filibustering several controversial nominees. To some Democrats, President Bush's nominees were simply too "conservative"<sup>217</sup>. In more recent years, the Senate has simply refused to consider a Supreme Court nominee on the grounds of political attitudes. In 2016 Democratic President Barack Obama nominated D.C. Court of Appeals Judge Merrick Garland to fill the seat of deceased Justice Antonin Scalia. The Republican controlled Senate failed to advise and consent the nomination as the Constitution outlines based on the desire to confirm a Republican nominated justice based on 2016 being an election year. Garland, known as a "centrist" judge, was reported to be a safe pick for Obama as the Senate was Republican controlled<sup>218</sup>. According to some political scholars, Obama nominated Garland despite the desire of the Democratic party to add a more liberal judge to the court because Garland was a more formidable candidate for Republicans to act on based on his qualifications and centrist political attitude in terms of judicial behavior<sup>219</sup>. Despite this, the Senate declared that they would only consider Garland's nomination during a lame duck session after the presidential election, fearing a more liberal judge nominated by possible incoming Democratic President Hillary Clinton. Ultimately, Republican candidate Donald Trump won the 2016 election and the Republican Senate successfully did not hold a confirmation hearing for Judge Garland.

The American Bar Association as well as the Federalist Society also bear influence on judicial appointments. While both organizations refute any idea that they hold political bias, there have been documented patterns of ideological influence. Both organizations have reviewed

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<sup>217</sup> Sunstein, Cass R., David Schkade, Lisa M. Ellman, and Andres Sawicki. *Are judges political? an empirical analysis of the federal judiciary*. Brookings Institution Press, 2007.

<sup>218</sup> Bolton, Alexander, Jordain Carney, and Mark Hensch. 2016. "Court War Begins with Obama Pick. (Cover Story)." Hill, March 17.

<sup>219</sup> Bolton, Alexander, Jordain Carney, and Mark Hensch. 2016. "Court War Begins with Obama Pick. (Cover Story)." Hill, March 17.

and made recommendations to the President and Congress about judicial nominees and score sitting legal professionals on a number of criteria to assume the federal bench, including the Supreme Court. The Federalist Society, one of the most influential legal bodies in the United States advocates for a conservative, textualist/originalist method of legislative interpretation. The organization has been used to consult the judicial behavior of both Presidents Bush and Trump to ensure that nominees for the federal bench were conservative<sup>220</sup>. According to Scherer and Miller (2008), judges who are members of the Federalist Society are considerably more conservative in their judicial decisions as compared to judges who are not members of the organization. According to the scholars “Using data on decision making in the U.S. Courts of Appeals, we find Federalist Society members are significantly more conservative than nonmembers and examine the long-term implications of our study.” Stanford University Professor James Lindgren conducted a study from 1989-2000 examining the pattern of judicial ratings of the American Bar Association, concluding that the organization who has played a significant role in vetting judicial nominations since the 1940s was biased toward rating liberal, non-originalist judges higher. According to Lindgren, the organization that was enlisted to prevent President Truman from nominating minorities, women and leftists, had in fact promoted more liberal judges to the bench, so much so that President George W. Bush removed the organization from the nomination process...until the Democrats regained control of the Senate in 2001. Lindgren notes in his study that “a Bush appointee with good credentials, both private and government practice experience, a top 10 law school education, law review experience, and a

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<sup>220</sup> [www.newyorker.com/magazine/2017/04/17/the-conservative-pipeline-to-the-supreme-court/amp;thehill.com/regulation/court-battles/360598-meet-the-powerful-group-behind-trumps-judicial-nominations%3famp](http://www.newyorker.com/magazine/2017/04/17/the-conservative-pipeline-to-the-supreme-court/amp;thehill.com/regulation/court-battles/360598-meet-the-powerful-group-behind-trumps-judicial-nominations%3famp)

federal court clerkship has a lower probability (32%) of getting the highest ABA rating than a Clinton appointee who has none of these credentials (48%)<sup>221</sup>.

The partisan nature of Supreme Court appointment has made for a growing political idea known as “court packing,” where legislators seek to ensure the Supreme Court reflect like political attitudes of appointing Presidents; this ensures the affirmation of judicial interpretation as justices act as policymakers in the interpretation of statutes. One of the most profound attempts to add members of the court based on their political attitudes was done in 1937 by President Roosevelt in an attempt to overrule the Supreme Court who declared some of his New Deal programs to be unconstitutional<sup>222</sup>. The idea, which ultimately did not come to fruition based on grossly unpopular public opinion was born from an idea that the life appointment of justices would not allow for President Roosevelt to have a court that reflected his political attitudes based on appointments to the bench by prior Executives. The modern political nature of the court has made away for the perception that their independent authority is shaped by personal political attitudes<sup>223</sup>. Roosevelt was not the only president to aim to shape the composition of the court. Scholars who have studied court packing and the actions of Presidents during the nomination process have found that the motivation to shape the court is based on the understanding of their policymaking responsibilities and its connection to perceived political attitudes. In addition to Roosevelt, Presidents Reagan, Bush and Clinton have all considered

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<sup>221</sup> Lindgren, James. "Examining the American Bar Association's Ratings of Nominees to the US Courts of Appeals for Political Bias, 1989-2000." *JL & Pol.* 17 (2001): 1.

<sup>222</sup> Leuchtenburg, William E, *The Supreme Court Reborn: The Constitutional Revolution in the Age of Roosevelt*. New York: Oxford University Press, 1995.

<sup>223</sup> Caldeira, Gregory A. "Public opinion and the US Supreme Court: FDR's court-packing plan." *American Political Science Review* 81, no. 4 (1987): 1139-1153.

adversarial legalism approaches to court nomination, considering special interests and nominees' positions on social issues such as abortion when nominating candidates to the bench<sup>224</sup>.

Synthesizing these findings makes way for a construct widely known amongst political scientists as the “attitudinal model.” Scholars who discuss this model agree that it is widely known that Supreme Court justices’ votes reflect their values and personal policy preferences<sup>225</sup>. A study of the early twentieth-century Roosevelt Court found distinct correlations on policy preferences and voting patterns based on the voting bloc of the members of the court on non-unanimous decision cases<sup>226</sup>. Further research around the attitudinal model has shown that each member of the Court has preferences around policy and want the outcomes of cases to come as close as possible to those preferences<sup>227</sup>. Scholars found that these findings are supported based on the structure of the Court. For some political scientists, justices vote on ideology because there is no electoral accountability, lack of ambition for a higher office, and that the Supreme Court is the court of last resort<sup>228</sup>. An empirical study of justice voting behavior showed a definitive correlation between ideology and voting behavior. In an examination of ideological statements quoted in four national publications by 18 justices from Warren to Kennedy prior to confirmation, scholars found the attitudinal model demonstrates high validity and reliability. Statements in the publications were coded by a random sample of college students into four categories: liberal, conservative, moderate and not applicable. After coding the statements of justices and examining them against voting patterns as a sitting justice, the study found that

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<sup>224</sup> Smith, Christopher E., and Thomas R. Hensley. "Unfulfilled Aspirations: The Court-Packing Efforts of Presidents Reagan and Bush." *Alb. L. Rev.* 57 (1993): 1111.

<sup>225</sup> Segal, Jeffrey A., and Albert D. Cover. "Ideological Values and the Votes of U.S. Supreme Court Justices." *The American Political Science Review* 83, no. 2 (1989): 557-65. doi:10.2307/1962405.

<sup>226</sup> Pritchett, C. Herman. *The Roosevelt Court: A study in judicial politics and values, 1937-1947*. Vol. 21. Quid Pro Books, 2014.

<sup>227</sup> Rohde, David W., and Harold J. Spaeth. *Supreme Court decision making*. WH Freeman, 1976.

<sup>228</sup> Rohde, David W., and Harold J. Spaeth. *Supreme Court decision making*. WH Freeman, 1976.

Marshall and Brennan were the most liberal, and Scalia and Rehnquist most conservative<sup>229</sup>.

Marshall and Brennan were members of the Democratic Party and nominated by Democratic Presidents while Scalia and Rehnquist were members of the Republican Party and nominated by Republican Presidents respectively.

Interpreting legislative language and political attitudes are not mutually exclusive. According to Rowden and Wallace (2018) judges are tasked to be “impartial decision-makers, interpreting and applying the law, presiding over courtrooms and ensuring a fair trial.”<sup>230</sup> While this may be the understanding of the purpose of the judiciary, it is fundamentally impossible for a judicial officer(s) to be impartial in their decision making in cases where there is a not clear and distinct meaning of the intent and totality of the statute. Personal political ideology has a direct influence on statutory and Constitutional interpretations and will be later examined from the perspective of a key high stakes case. The federal courts are an inherently political organization by virtue of their construction by the legislative and executive branches as well as the individual judges’ interpretation of legislative language as fixed or mutable meaning. For the accused, outcomes at the appellate court level are a matter of a “luck of the draw,” and at the Supreme Court level, dependent upon the President that instilled the Chief Justice.

It is noteworthy to highlight that federal judges agree on the interpretation of the law significantly more than they disagree<sup>231</sup>. According to a 2018 examination of Supreme Court decisions, it is recorded that the court decided cases with a unanimous decision 36% of the time- the largest percentage as compared to other ratios. When decisions are not unanimous, decisions

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<sup>229</sup> Segal, Jeffrey A., and Albert D. Cover. "Ideological Values and the Votes of U.S. Supreme Court Justices." *The American Political Science Review* 83, no. 2 (1989): 557-65. doi:10.2307/1962405.

<sup>230</sup> Rowden, Emma, and Anne Wallace. "Remote judging: the impact of video links on the image and the role of the judge." *International Journal of Law in Context* 14, no. 4 (2018): 504-524.

<sup>231</sup> McConnell, Michael W. "Active Liberty: A Progressive Alternative to Textualism and Originalism." (2005): 2387.



where justices split 7-2 or 8-1 make up 15% of case outcomes while 5-4 decisions make up 19% of all cases<sup>232</sup>.

The 19% 5-4 split is still an extraordinary dynamic to consider as it adds context to the idea that 2/10 case outcomes are based on the political party of the majority of the justices. In cases where the law is not clear, or there is no law at all, political ideology or affiliation matters. According to some political scholars

“The absence of binding law is what makes hard cases hard. In such cases, the convictions particular flesh-and-blood judges ---their own views about how to handle difficult questions ---inevitably plays a role.”<sup>233</sup>

There is no such idea that the “law is the law.” Liberal judges argue that Congress passes laws to achieve some aim, the judge should rule on the spirit of the statute rather than the letter of the law when a statute is unclear. Textualists by contrast, aim to understand how a reasonable person would understand the text of the statute. This judicial philosophy, often associated with conservative justices, believe that taking into account legislative intent is unconstitutional and the rule of law can be understood simply by dictionary definition rather than perceived intent<sup>234</sup>. The following case study examines judicial philosophy and its connection to political ideology in the application and dissent of a significant federal court case.

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<sup>232</sup> [https://www.washingtonpost.com/news/posteverything/wp/2018/06/28/those-5-4-decisions-on-the-supreme-court-9-0-is-far-more-common/?utm\\_term=.97a129f9ea81](https://www.washingtonpost.com/news/posteverything/wp/2018/06/28/those-5-4-decisions-on-the-supreme-court-9-0-is-far-more-common/?utm_term=.97a129f9ea81)

<sup>233</sup> Sunstein, Cass R., David Schkade, Lisa M. Ellman, and Andres Sawicki. *Are judges political? an empirical analysis of the federal judiciary*. Brookings Institution Press, 2007.

<sup>234</sup> Manning, John F. "What divides textualists from purposivists." *Colum. L. Rev.* 106 (2006): 70.

## CASE STUDY

*Obergefell v. Hodges* (2015) has become one of the landmark Supreme Court decisions in recent history. The Court ruled in favor of the petitioners, who argued that it was unconstitutional for same-sex marriage to not be recognized in states where the union was not performed. At the time of the decision, four states (Michigan, Kentucky, Ohio and Tennessee) defined marriage as a union between one man and one woman and thus, did not recognize same-sex unions that obtained marriage licenses in other states. Plaintiffs argued that the inability of them to transfer their marriage license was a violation of the 14<sup>th</sup> amendment, more specifically, the liberty clause<sup>235</sup>. Justices ruled in favor of the plaintiffs, declaring that the Constitution guarantees a nationwide right to same-sex marriage, making any individual state decision on the matter unconstitutional. The liberty clause of the 14<sup>th</sup> amendment was the provision where justices sought to understand the legislative language. The amendment states:

*“ No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. ”*

The opinions in the case could be predetermined on political ideological grounds in the justices' interpretation of the Constitution. The justices who ruled with the majority opinion were:

Kagan-Democrat appointed by Obama  
Sotomayor-Democrat appointed by Obama  
Ginsburg-Democrat appointed by Clinton  
Breyer-Democrat appointed by Clinton  
Kennedy-Republican appointed by Reagan

The justices' dissenting from the majority were:

Roberts-Republican appointed by Bush  
Scalia-Republican appointed by Reagan

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<sup>235</sup> [https://www.supremecourt.gov/opinions/14pdf/14-556\\_3204.pdf](https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf)

Alito -Republican appointed by Bush  
Thomas-Republican appointed by Bush Sr.

Justice Kennedy, a consistent swing vote on the Court, voted with the majority and declared in their opinion that:

*“No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization’s oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.”<sup>236</sup>*

***Statutory interpretation is inherently political.*** In analyzing this case, what is significant is the political ideology applied in the opinions of Constitutional interpretation by the justices. In the dissenting opinion of Justice Thomas, he declared that the liberty clause of the 14<sup>th</sup> amendment as “freedom from restraint [a textbook definition of liberty].<sup>237</sup>” Thomas argued that the states were not restraining same-sex couples from living their lives freely, which Thomas interpreted as the extent of the Constitutional provision. Like classical conservative-originalist ideology, Justice Thomas believed that any right past the provision was left to the states to decide, asserting federalism to support his opinion; a thought aligned with conservatism. For Justice Thomas, “Liberty is only freedom from governmental action, not an entitlement to governmental benefits.”

Justice Kennedy led with the majority opinion which was signed on to by Sotomayor, Kagan, Breyer and Ginsburg. The justices sought to define a progressive ideology of marriage and how the understanding of personal liberty needed to evolve over time, much like the definition of marriage has evolved. This idea of Constitutional evolution is a key fundamental,

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<sup>236</sup> Yoshimo, Kenji. "A New Birth of Freedom? Obergefell v. Hodges." Harv. L. Rev. 129 (2015): 147.

<sup>237</sup> <https://www.cbsnews.com/news/dissenting-opinions-in-the-supreme-courts-same-sex-marriage-ruling/>

progressive approach understood by liberal ideology as the “Living Constitution”. In the majority opinion, the justices discussed that:

*“The ancient origins of marriage confirm its centrality, but it has not stood in isolation from developments in law and society. The history of marriage is one of both continuity and change. That institution—even as confined to opposite-sex relations—has evolved over time. For example, marriage was once viewed as an arrangement by the couple’s parents based on political, religious, and financial concerns; but by the time of the Nation’s founding it was understood to be a voluntary contract between a man and a woman. As the role and status of women changed; the institution further evolved. Under the centuries-old doctrine of coverture, a married man and woman were treated by the State as a single, male-dominated legal entity. As women gained legal, political, and property rights, and as society began to understand that women have their own equal dignity, the law of coverture was abandoned.”<sup>238</sup>*

In addition to arguing the progression of the definition of marriage, the majority and dissenting justices differed on the ability of the court to grant “dignity” to gay and lesbian couples. For the majority, the Due Process clause of the 14<sup>th</sup> Amendment guaranteed liberty under the enumerated Bill of Rights. These justices decree that, “these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs. many persons did not deem homosexuals to have dignity in their own distinct identity.”

Opposing this view, dissenting Justice Thomas, supported by Scalia, declared that the Constitution has no dignity clause, and that the majority went beyond the scope of the courts to provide dignity to same-sex couples. This contrast in viewpoints underscores the foundations of conservatism and liberalism. The majority wanted to see progress, citing lower court rulings that made same-sex marriage legal across the nation over the previous 8 years. The majority believed that the role of the courts was to protect fundamental rights in interpreting the Constitution. As stated in the majority opinion, there is no one formula that govern how a judge should understand the Constitution to protect a person’s fundamental rights. The majority note that history and

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<sup>238</sup> [https://www.supremecourt.gov/opinions/14pdf/14-556\\_3204.pdf](https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf)

tradition guide Constitutional interpretation to learn from the past but not let it dictate the present. In totality, the majority opinion punctuates liberal, Democratic thought by way of non-originalist ideology that seeks to understand the Constitution and statutory interpretation to be a living process of active liberty where judges apply the provisions of the Constitution based on the morals and social norms of the present day, rather than past.

The dissenting justices cohesively highlight an ideology easily tethered to conservative, Republican ideology that asserts that the Constitution and statutory law are fixed documents that judges do not have the authority to interpret based on their understanding of social progress or change. For Republicans, legislative interpretation should be understood only as the framers understood the language to mean and that the law should be consistent and predictable. It is important to note that the conservative approach to this case do not highlight Conservatives as “anti-gay marriage” but pro-Constitutional textualists.

The outcome of *Obergefell v Hodges* would likely have a different outcome had President Reagan or Bush for example, appointed more justices who were active on the bench at the time of the case. Understanding the connections between political ideology and judicial interpretation, it can be assumed that the Rehnquist Court would have ruled in favor of the states, dissenting against the petitioners. This assumption can be made based on the core bloc of Republican-nominated, conservative ideological justices who served on the Rehnquist Court during the late 1980’s-90’s. This court held firm to federalism and states’ rights, which lends to the belief that had the case been brought to the courts during the Rehnquist Court, the ruling would have been reversed.

The differing outcomes of court cases based on the jurists who hold office at a given time highlight the hypothesis that the judiciary is a political institution, and Supreme Court Justices make policy based on their individual political attitudes. Justices are unable to be “impartial

decision makers” because their political lens leads how they view government and the governed. Though public opinion greatly sees the Supreme Court as a legitimate institution it is a fallacy to interpret the actions of the Supreme Court as apolitical. As Justice Stephen Breyer declares in the notion of “active liberty,” having an opinion about the rule of law and the direction of government is central to democratic thought. Further examination of the role of democracy in the judiciary may indicate the need for the United States Congress to consider amending the Constitution to electing justices through popular vote. There is existing research which advocates for this method of judicial selection as the cornerstone of democracy is active participation of the governed within the government. Further research in the area of political ideology in the courts may lead to an examination if justices are expected to abandon personal democracy to be an enlightened statesman within the court. As the honorable Supreme Court justices are also human, it can only be expected that each have personal political attitudes about the understanding of United States institutions and how to interpret legislative language.

Nevertheless, the writer concludes that political attitudes greatly influence judicial outcomes. History has shown that from selection to presiding, the process and guiding principles of the Supreme Court are not the law; it is the law as their political lens see it. The only reasonable method of ensuring a fair and speedy trial is to allow the accused to select justices hearing the case, much like defendants choose their counsel (which in itself is unconstitutional). This process guarantees a long, unlikely legislative battle and essentially diminishes the authority of the Executive with judicial appointment as they are not able to orchestrate the trajectory of the court. Until there is consideration by legislature to examine the ability of federal courts to guarantee a “fair and speedy trial,” by developing a bipartisan method of judicial selection and balancing of court ideology, court decisions will remain a luck of the draw-right case, right court, wrong case, wrong court.

## CONCLUSION

All voters have political attitudes. Whether conscious or unconscious of how these attitudes are formed, the political behavior of the electorate has grown in insurmountable ways, so much so that the political climate in the United States has become cold and polarizing. The strategic influence of political attitude shaping that politicians use to mobilize voters and control court decisions is a direct assault on democracy and a free society. The federalist papers clearly outline the goal of the framers to create a more perfect union and abandon the authoritarian model of government by placing power in the hands of the people to be an active participant in our government. The framers also crafted the republic with the federal judiciary as an appointed branch of government, free of political influence as justices' rule on the rule of law, not law as seen through a political lens. Unfortunately, as politicians seek to influence the electorate, justices influence the law, enacting policy through partisan court rulings that dictate the trajectory of society for generations to come. Impression management and political bias within the courts abandons the principles of a democracy and free society; ultimately it is the responsibility of each voter to seek truth and make informed political decisions when shaping their own attitudes.

American politics has shown a growing sense of tribalism, with the Pew Institute reporting that each party having poor views of the other simply on the ground of party affiliation. As previously noted, according to the 2016 study of partisanship and political animosity, 45% of Republicans say that Democratic policies threaten the nation's well-being while 41% of polled Democrats view GOP policies as equally threatening. Findings from the study also show that members of both parties associate extreme negative views of one another and are increasingly less likely to engage in friendships with those of the opposing party. As political attitudes are

shaped, voters have become increasingly polarized, ultimately achieving political gain for politicians.

Chapter one examined the factors that influence political attitudes in the United States and took an in-depth analysis of political communication as one of the most consistent strategies used by politicians to influence partisanship. After a thorough literature review, emergent themes from experts were that the best politicians' message with passion, political communication is inherently manipulative, fear is a strategy used to mobilize voters, and effective political rhetoric involves identity and group politics.

As discussed in chapter one, research suggests that through messaging, politicians seek to distort and mystify information to sell an image of party or candidate ideology rather than policy. With this, it is consistent amongst scholars that political language is inherently manipulative, creating perceptions of a myriad of feelings including fear, and hope amongst other emotions. The interpretation of political messages greatly impacts partisanship and political attitudes. Heuristics, symbolism and metaphor all add context to rhetoric and help to convey the social reality that politicians seek to create through imagery. In addition to this, family, tribalism and religion are all antecedent qualities that impact message interpretation and politicians leverage these to frame issues or policy based on the values that resonate with voters as relative to their religious background and family values. Politicians aim to create these feelings amongst voters to align the electorate for personal political gain.

As demonstrated through the case study, elections are won as voters align through strategic messaging, ultimately creating an increasingly polarized political climate in the United States, negatively impacting democracy. The chapter highlighted the 2018 United States midterm elections and the rhetorical strategies leveraged by President Donald Trump to connect with voters. After analysis, it was confirmed that the themes suggested by experts were



conveyed in the messaging strategy leveraged by President Trump. The analysis did not seek to suggest if these strategies were effective, but rather to support the existing research in political language and communication. It is suggested for future research that scholars analyze effectiveness and election outcomes as an indicator of the rhetorical and messaging strategies used by politicians. This effort will help to compare classic linguistic pedagogy as discussed in the literature review with contrasting or new emergent themes that may arise as political parties and politicians continue to make efforts to connect with voters and effectively persuade the electorate. Nevertheless, analyzing scholarly research against the case study provided findings that affirm the hypothesis that political messaging is designed to shape political attitudes which threatens democracy and a free society.

Chapter two uncovered the use of race through coded language to shape political attitudes within the electorate. This strategy, like the overall construct of political messaging, benefits politicians through policy and election outcomes. As discussed in chapter two, one of the deep-rooted traditions in American politics is the use of race to create social panic, divisions amongst people and create a need for government or government reform. The strategic use of race and racially charged rhetoric in political rhetoric can be traced back to the Reconstruction era with President Woodrow Wilson and continues with sitting president Donald Trump.

By creating fear of a group of people, politicians have mobilized voters to shape political and election outcomes. Scholarly literature shows that President's Lyndon Johnson, Nixon, Reagan, George H.W. Bush, Clinton and George W. Bush have all leveraged race strategically to create impressions amongst voters that their attitudes should shift, in fear of an ethnic group of people. Studies show that as American's mourn national events such as 9/11 and murders, politicians leverage these events to create a social reality that voters should be afraid of the people (primarily minorities), rather than the event itself. Examples of this can be seen through

President George H.W. Bush's "Willie Horton" crime rhetoric and President Donald J. Trump's use of the "immigrant caravan" as advocacy to push Congress to secure funding for his proposed wall on the southern border in the name of safety and security.

Findings from scholarly research show that this strategy of manipulation has paralyzing effects on society and had adverse effects largely on some of the most vulnerable communities in the country. Crime, drugs and terrorism have all been used to convey the presence of danger to evoke fear from voters in political discourse. Research shows that the federal government has little control over issues like drugs and crime, as they are most impactful at the state level. Scholars note that rhetoric used to address these issues are mostly symbolic, and fear language is designed to manipulate voters into feeling a sense of relief that something is being done about a problem...despite how big or small the problem may be in reality. This impression management is a threat to democracy as voters' political attitudes are shaped by politicians to imply that a group of people pose a threat to ordinary American's quality of life. Every U.S. President since John F. Kennedy has leveraged crime, drugs or terrorism as coded language to marginalize communities and reshape the electorate. Sixty years since the days of President Johnson, the Trump administration has seemingly spun all three issues to shape policy and opinions. The words crime, drugs and terrorism do not only place fear in the hearts of the suburban victims, but also in the communities who are the faces of these issues.

Lastly, chapter three culminates this thesis with an examination of how political attitudes influence judicial outcomes. As demonstrated through chapters one and two, voters have increasingly partisan, political attitudes and research shows that judicial officers are not an exception to party affiliations and biased political attitudes. Contemporary schools of thought debate the legitimacy of the courts based on the appearance of partisanship in legislative and constitutional interpretation and policymaking. According to some scholars, the Supreme Court

is viewed by the public as an apolitical institution because most conventional scholarly wisdom suggests that voters are unaware of the policymaking process and therefore believe the courts are relatively more objective and above politics. By contrast, a thorough analysis of the court's behavior by some legal and political scholars suggests that this public perception is an inaccurate depiction of judicial behavior in relation to a justice's political attitude.

History has shown that from selection to presiding, the process and guiding principles of the Supreme Court is not the law; they are the law as their political lens see it. As previously discussed in chapter three, interpreting legislative language and political attitudes are not mutually exclusive. Scholars note that judges are tasked to be "impartial decision-makers, interpreting and applying the law, presiding over courtrooms and ensuring a fair trial." Scholarly research shows that while this may be the understanding of the purpose of the judiciary, it is fundamentally impossible for a judicial officer(s) to be impartial in their decision making in cases where there is a not clear meaning of a law. Personal political ideology has a direct influence on statutory and Constitutional interpretation.

As some scholars argue that the originalist model of judicial interpretation negate the notion that justices demonstrate their political attitudes with how they interpret the law. The faithful-agent model refutes the idea that originalism exists to prevent political bias within the courts as the construct clearly indicates that judicial officers must faithfully seek the intention of the lawmaker when constitutional or statutory language is unclear, making it fundamental that the judiciary look at law from their individual lens. The American Bar Association and Federalist Society have both worked alongside the legislative and executive branches of government to ensure that political ideology remain a factor in judicial selection as research has shown a liberal bias from the ABA and conservative bias from the Federalist Society. As of

2019, a third of the Supreme Court are members of the Federalist Society (Roberts, Gorsuch and Kavanaugh), all of which were nominated by Republican presidents.

Cases like *Obergefell v. Hodges* (2015) make it clear that the Supreme Court is a partisan institution, guided by not simply the law, but the law as each justice's political ideology see fit. While it is well documented that a vast majority of cases that come before the court have a unanimous decision, it does not dilute the importance of landmark, politically biased cases such as *Obergefell* which effectively made same-sex marriage a right under the fourteenth amendment of the constitution.

Having political opinions and attitudes are important to democracy and a free society as the founding fathers designed the country to be. The intentional shaping of these attitudes and subsequent bias in the justice system rob each American of the beauty of that free society. Using coded language, inflammatory rhetoric and race to create an alternative reality of facts or national events abandon American principles. If we the people of the United States, in order to form a more perfect union do not hold our politicians, the media and courts accountable to ensuring liberty and justice in our democracy, then we have lost the very foundation of the American fabric. On the final day of the constitutional convention, Americans gathered and asked Benjamin Franklin if our newly crafted government was a monarchy or republic, he responded "a republic...if you can keep it." It is the duty of each American to keep it, and that includes keeping our free society pure of political attitude shaping and judicial bias.

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# DR. JOSHUA BRANDON SWANN

Dynamic and performance-driven professional with a track record in providing strategic direction and leadership, administration, and management within profit and non-profit organizations, enthusiastic to integrate academic background and professional development experience into the classroom setting. Exemplify in-depth understanding of cross-functional areas with unique organizational structure and management style; broad-based perception, and exceptional skills in the development of recruitment and selection programs. Reputation for demonstrating a collaborative management approach with effective visioning skills to steer organizations toward growth. Adaptive and flexible to new and high-pressure environments while utilizing effective communication and interpersonal abilities to foster relationship with people of diverse backgrounds to promote learning and professional growth.

## CORE SKILLS AND COMPETENCIES

- Marketing & Communication
- Critical Race Theory
- Relationship Building
- Process Development
- Research and Development
- Program Coordination

## PROFESSIONAL EXPERIENCE

**MAC Cosmetics**, Washington, DC

**MANAGER, RETAIL OPERATIONS**

May 2016 – Present

- Develop metrics and assessment of customer service, sales training, and event strategies.
- Instrumental in the development of annual strategic plans to drive business growth across all channels of distribution.
- Analyze and implement enhanced policies and procedures to reduce risk and improve operations efficiency.
- Organize and facilitate detailed leadership training for staff members, ensuring that staff received the necessary training to accomplish job responsibilities.

### *Key Contributions:*

- Increased retail productivity and operational efficiencies by implementing organizational restructure and change, including changing and restructuring of work processes.
- Recognized for ensuring the highest possible standard of customer service, productivity, and profitability through proper training and mentoring of the sales team.

**MAC Cosmetics**, New York, NY & Los Angeles, CA

**MANAGER**

August 2009 – May 2016

- Managed the store team to create a sales environment that consistently met sales goals and reduced operating costs.
- Oversaw daily operations, staff, facilities, inventory, and technology.
- Led all efforts in meeting sales goals by ensuring superior performance of the team through training and coaching.
- Delivered well-executed and helpful performance reviews and shared best practices across the department.

### *Key Contributions:*

- Consistently recognized for the ability to organize and execute large-scale department reorganization.
- Ensured sales, operations, and customer service objectives were achieved and maintained by coaching and developing staff, which contributed to operational efficiencies and exceeding corporate goals.

## EDUCATION

**University of Southern California** | Los Angeles, CA

**Doctor of Education: Organizational Leadership and Change**, May 2018

Published Dissertation: A Study of Employee Engagement and Retention

St. John's University | Queens, NY

Bachelor of Science: Communication Arts, Minor: Government & Politics - *Cum Laude*, May 2008

#### PROFESSIONAL AFFILIATIONS

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Iota Phi Theta Fraternity, Incorporated

Member, National Association for the Advancement of Colored People (NAACP)

Member, Maryland Democratic Party